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Vol. VII

TRANSCRIPT OF RECORD

(Pages 4255 to 4910)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 343

STATE OF NEW YORK, STATE OF DELAWARE, STATE OF INDIANA, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF ALABAMA, ET AL.

No. 344

STATE OF MAINE, STATE OF NEW HAMPSHIRE, STATE OF VERMONT, ET AL., APPELLANTS,

vs.

THE UNITED STATES, OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 345

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BEAVER, MEADE AND ENGLEWOOD RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL., APPELLANTS,

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FILED AUGUST 1, 1946.

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CLARENCE E. DAY was sworn and testified as follows:

Direct examination.

By Mr. Plunkett:

Q. Will you state your name, residence and occupation for the record, please.

[fol. 4432] A. Clarence E. Day, residence Oakland, California, occupation Manager of the Bureau of Transportation Research of the Southern Pacific Company.

Q. Do you make these researches for the subsidiary companies that make up the Southern Pacific Company?

A. Yes. Our Bureau is part of the executive office and as such it covers all of the transportation system of the Southern Pacific Company.

Q. Would that include the Texas and New Orleans Railroad?

A. It would.

Chairman Aitchison: I do not think it will be necessary to go into the witness' qualifications, Mr. Plunkett. I am sure they will be conceded by everyone.

Mr. Plunkett: Thank you. The Chairman states that your qualifications will be conceded, so we will not bother with them.

By Mr. Plunkett:

Q. Have you familiarized yourself with the cost study entitled "Relative Freight Service Costs in the Various Territories"——

Mr. J. R. Bell: Speak louder. We cannot hear you.

By Mr. Plunkett:

Q. (Continuing:) —introduced in this proceeding by Dr. Edwards as Exhibits Nos. 2 and 3?

A. I have.

Q. On page 1 of Exhibit No. 2, Chapter 1, it is said "The distribution of expenses herein has been based on the rela-[fol. 4433] tive use that the carload and less than carload traffic of varying net loads makes of the different transportation facilities of the carrier." Do the cost scales shown in Exhibit No. 3 truly represent the results of actually distributing the expenses between the shipments indicated?

A. No. I say expenses have not been distributed to the shipments. I say the expenses have not been distributed to the shipments for the reason that the scales indicate costs of shipments whether any such movement did or did not actually take place. In fact, the distributions have been made without any reference to shipments and without accurate knowledge respecting shipments, as the recorded statistics do not reveal the actual carload quantities or the actual miles of shipments hauled. The distributions which Dr. Edwards made were made between functional operations such as carload, car mile, gross ton mile, etc.

Q. If the scales have not been constructed by direct distribution of expenses, how then have they been made?

A. As before stated, the expenses have been distributed and apportioned to specific functional operations. The expenses were broken up into groups and the aggregate of each group was then divided by the respective number of units of performance to produce cost factors. The scales were then simply determined by computation. A certain number of units of performance of each class were assumed [fol. 4434] to be involved in each shipment and these were multiplied by the respective cost factors and added together.

Q. When you speak of functional operations, you have in mind the production of gross ton miles, car miles and cars handled in terminal operations, is that right?

A. That is right.

Q. In the case of carload shipments, how many functional operations are recognized as affecting the cost of hauling the different shipments?

A. Only three. The carload cost scales applicable to shipments transported in railroad owned equipment, only recognize differences in the number of carloads, car miles and gross ton miles involved in the various shipments. Hence, all of the scales indicating the cost of hauling shipments in railroad owned equipment may be reproduced simply by use of the three cost factors.

Q. You determine the number of gross ton miles involved in a given haul multiplied by the cost per gross ton mile, and likewise you determine the number of car miles and number of cars handled in terminals and multiply by the cost factors for those two functional operations?

A. Adding them together——

Q. Adding them together,——

A. —to produce the total cost.

Q. —to get the amount shown in the various tables?

[fol. 4435] A. That is right.

Q. Is that correct?

A. Yes.

Q. Do these cost scales in Exhibit No. 3 include an allocation of all expenses, both variable and non-variable?

A. They do. In the computations of the cost scales applicable to carloads, every item of expense, variable and fixed, is added in proportion to the three different functional operations recognized by the formula and used together. In Exhibit No. 3 certain fixed expenses are added in the end as a percentage of others, however, the effect is precisely the same as if added in proportion to the same three functional operations.

Q. You are now speaking of his Exhibit No. 3, is that right?

A. That is right.

Q. In Exhibit No. 13 he used a different basis, did he, for apportioning the constant expenses?

A. Yes. In fact, the constant expenses were apportioned on the basis of tons and ton miles. That is, first it was divided percentagewise between the two divisions, line and terminal.

Q. But in introducing Exhibit No. 13 Dr. Edwards stated that Exhibit No. 3 was not withdrawn; am I right?

A. That is right.

Q. It is for that reason you are directing your attention [fol. 4436] to Exhibit No. 3 at this time?

A. Partly.

Q. Do the various scales indicate the true cost of hauling such shipments in your opinion?

A. No, they do not. The cost scales cover more than the cost; they cover additionally, definite profits arrived at by an arbitrary formula to cover return on value and other constant charges.

Chairman Aitchison: May I ask you this question:

By Chairman Aitchison:

Q. As I understand it, Doctor, could we take the exhibit which you are now analyzing and separate out the amount

of the derived cost which represents profit and look at the remainder?

A. I have done that further on.

Chairman Aitchison: I see. Proceed.

By Mr. Plunkett:

Q. Exhibit No. 3 represents several cost levels. What have you to say regarding costs having different levels?

A. Cost, in the absolute sense records all diminution of assets. There may be some disagreement whether certain assets are or are not diminished because of a certain operation, but when agreement is reached on this point, all expenses add up to but one value—the whole cost. I construe the cost to be the out-of pocket cost. The different purported cost levels in Exhibit No. 3 in fact reflect different [fol. 4437] requirements to cover certain specified charges. Cost Level II covers all operating expenses, rents and taxes. Cost Level III requires additional profits to contribute to return on investment, and Cost Level V requires still more profits to contribute to the deficiencies of passenger and less than carload earnings. All scales above Cost Level I are computed scales of revenue needs and not cost scales.

Q. When you use the word "profits" in your answer to this last question, you have in mind all items over and above the out-of-pocket costs?

A. That is right.

Q. Which would include the constant expenses as well as the return on valuation?

A. That is right.

Q. Dr. Edwards does admit the term, "level of revenue needs" would probably be more accurate when referring to Cost Levels IV, V-a and V-b, does he not?

A. That is correct. That is to say, when he adds the deficiencies of passenger and less than carload operations to what he calls the cost of the carload freight he recognizes this distinction. The other scales he designates as "Cost Scales". As a matter of strict accuracy, each of the scales above the out-of-pocket cost scale is indicative of the revenue needs to cover the out-of-pocket or variable ex- [fol. 4438] pense plus some proportion of the other items of fixed expenses which he has charged through the medium of functional units.

Q. As I understand it, it is your point that the only expenses that result in a diminution of assets with respect to a given shipment are the out-of-pocket expenses?

A. That is correct.

Q. Is that right?

A. That is right.

Q. The other elements occur without reference to any given shipment?

A. That is right.

Q. Will you explain the difference between the characteristics of variable expenses and fixed expenses?

A. The cost of conducting rail operations may be conveniently divided into two general divisions; namely, "Fixed Expenses" and "Variable Expenses". Fixed expenses, as the designation implies, embrace all those expenses which are invariable with changes in traffic flow. The amount of these expenses depend on size of plant. They do not commonly change except to increase and then only when the capacity of the plant is reached. These expenses include general maintenance such as maintaining right-of-way fences, snow sheds, replacement of property due to the action of the elements, management, maintaining [fol. 4439] on- and off-line agencies, supervision, general expenses, ad valorem taxes and interest. It also includes the excess capacity expenses of branch lines and subsidiary lines.

Variable expenses embrace all of those expenses which fluctuate with the changes in traffic flow. This group includes all expenses intimately associated with yard locomotive service, road locomotive service, train service, car service, station service and embrace all that portion of roadway expenses affected by use. The various items entering into this group of expenses or some proportion thereof, increase and decrease substantially in direct proportion to the changes in the output. Variable expenses are taken on with increases in output, or saved by reductions.

Chairman Aitchison: May I ask you, Dr. Day—perhaps you are going to cover this—is there any marked difference between you and Dr. Edwards with respect to the statement you have just made?

A. I believe not. In fact, I know not.

Chairman Aitchison: Proceed.

By Mr. Plunkett:

Q. How are these two groups of expenses to be regarded by the cost analyst?

A. By definition, the cost is the amount paid out to secure a benefit or it is the out-go to earn an income. In any large enterprise involving a variety of outputs the total expense is of two kinds—one set of expenses is directly connected [fol. 4440] with and due to the specific operations conducted and the other is necessary for and due to the operations of the property as a whole; the former class of expenses will increase and decrease with business and the latter will not vary except to change with the size of the plant. Only the variable expenses should be regarded as the amount paid out to secure the benefits of specific shipments. The fixed expenses should be regarded as the amounts paid out to secure the benefits of the operations as a whole, or more particularly, the benefits from carrying on the more productive operations as distinguished from the marginal ones, meaning the operations providing small profits.

The total fixed expenses give expression to the annual financial responsibilities which have been assumed by the owners at some time or other in the past. These responsibilities are taken on by the owners in anticipation of an adequate net income. If the returns from the entire traffic should prove insufficient to meet the requirements of fixed expenses, the undertaking was not justified in the first place and the owners suffer the loss. On the other hand, if the income proves sufficient, the promotion is justified and the owners profit by it. No matter how the project turns out, whether favorable or otherwise, the judgment was based on expectation with respect to the net income and not the judgment of the number of carloads, car miles, or [fol. 4441] gross ton miles.

By Chairman Aitchison:

Q. In making that statement do you have in mind the fact that before a certificate of convenience and necessity is issued by the Commission for a new line that the expectation with respect to net income as well as the judgment as to the number of carloads, car miles and gross ton miles, is commonly supplied to the Commission?

A. I do not get the point.

Q. The point is just this: Before a new line is built, does not the prudent, experienced railroad promoter form a judgment as to the probable number of carloads, car miles and gross ton miles he can expect and the income he will receive from it?

A. Yes. He forms a judgment, naturally, as to the volume of the traffic that is moving——

Q. No; that will move.

A. —and he may use gross ton miles and car miles in order to anticipate his costs, but he is building it and hopes to build it because he hopes to earn a net income from those operations.

Q. He makes very careful calculations before he puts his money in, or before he even applies to the Commission for a certificate, does he not?

A. Yes. He estimates a satisfactory net income, no doubt.

[fol. 4442] Q. He has to do that on the basis of first, estimate of the amount of traffic; and second, estimate of the amount of revenue he would get from that; and third, estimate of the expenses?

A. That is right.

Chairman Aitchison: Thank you. Go ahead.

By Mr. Plunkett:

Q. Proceed, please, with your answer, Dr. Day.

A. In any event, the responsibility for the success or failure of the enterprise rests upon the owners and not the shipper who pays only for the service. The fixed expense is like water over the dam—it cannot be brought into the present and associated with current operations.

By virtue of their changing aspects and intimate relation to particular services on the other hand, variable expenses may be properly associated with appropriate functional operations incident to single shipments. For example, wages of road locomotive enginemen may be appropriately associated with road locomotive miles; wages of yard enginemen may be appropriately associated with yard locomotive hours, trainmen's wages with train miles; yard fuel with yard locomotive hours; freight car expense with freight car miles, etc. In turn, the cost of operations may be associated with specific shipments through the medium of these services.

[fol. 4443] Q. Is it to be understood by your testimony that the fixed expenses are not a part of the cost of hauling single shipments?

A. Yes; fixed expenses are not a part of the cost of hauling single shipments.

Chairman Aitchison: Would you say they are a lot like the lining in a man's overcoat? They are in there just the same, are they not?

Mr. Plunkett: The next question brings that out.

The Witness: The fixed expense of a large industry may be likened unto the living expenses of a private individual. It is as improper to include the fixed expenses of an industry as a part of the cost of performing the various services which it renders, as it would be for an individual to include his living expenses as a part of the cost of carrying on his private business. These expenses of both the industry and the individual begin when each comes into being and each strives to earn enough above its true cost to meet its living expenses and something more.

By Mr. Plunkett:

Q. Are fixed expenses to be ignored?

A. No; the fixed expense is a matter to be reckoned with, however, in the art of rate making but not by formula treatment. It is not within the province of a cost analyst to say how the charges should be made or from what sources they should flow. Pricing is done by the traffic officer, [fol. 4444] not the cost analyst.

In general, the rate on a single commodity is made with an eye to the total contribution that the commodity may make to the net income statement. It is made, giving consideration to its probable effect on the volume of the movement. Because of the inverse relation of the level of a rate upon its use, the desirable rate or the one that makes the greatest contribution to net income is neither a rate so low as to leave no margin of profit above true cost, nor so high as to dry up the movement. The most profitable rate lies somewhere between these extremes. Because of the indefinite effect of a rate level on the volume of the movement, the rate which will produce the greatest contribution to the net income and most nearly meet the "revenue needs" of the carrier to cover fixed expenses can-

not be computed by any formula. As before stated, rate making is an art not a science.

Q. Do the fixed expenses which have been included with the true costs in Dr. Edwards' study constitute substantial amounts?

A. Yes, indeed: It is a very large proportion of the total as may be seen by reference to Dr. Edwards' exhibits.

The true cost corresponds, by definition at least, to the costs which are included at Cost Level I in Dr. Edwards' study; namely, what purports to be his out-of-pocket cost [fol. 4445] level. Fixed expenses correspond to all other expenses over and above the out-of-pocket cost items which he has in one manner or another distributed to specific operations to cover the different elements of cost listed at such levels.

Com. Splawn: I would like to ask you a question right there.

By Com. Splawn:

Q. Is it your thought that the return on investment is a residue after expenses are paid and not properly chargeable as a cost of performance of the service?

A. It is chargeable to all the service rendered, but it cannot be parceled out and charged to individual shipments, is the point.

Q. It is in the nature of a profit for assuming the risks of the enterprise, is it?

A. Yes.

Chairman Aitchison: I think it is clear that you have not made the point that the true costs as you speak of them may not be common costs or joint costs.

The Witness: It would exclude the joint—no, it is not that broad.

Chairman Aitchison: You have not made that claim, have you?

The Witness: No.

By Mr. Plunkett:

Q. Some of your out-of-pocket costs are necessarily joint costs, are they not?

[fol. 4446] A. That is right. Trainmen's wages are joint in a particular train.

Q. Yes.

A. It has to be divided between all of the traffic that is handled in the train.

Q. Are there any true out-of-pocket costs in the sense of costs that can be allocated directly to a shipper?

A. I cannot think of a single item that can be so allocated.

Chairman Aitchison: A shipper?

Mr. Plunkett: A shipper.

Chairman Aitchison: How about a class of traffic? There are plenty of those that can be allocated to different classes of traffic, is that not correct?

The Witness: That is right. There are some isolated operations that are connected with livestock, for example, that are not common to all traffic.

By Chairman Aitchison:

Q. Take city ticket offices, for instance.

A. Yes.

Q. Passenger tariffs and freight tariffs.

A. Yes.

Q. Maintenance of passenger train equipment and many other items of that sort.

A. Yes.

Q. Those are all allocated directly, are they not?

[fol. 4447] A. Well, I was speaking a little too freely when I said that. When they are in road service, I was thinking.

By Mr. Plunkett:

Q. In freight service, you mean?

A. I beg your pardon?

Q. In freight service, freight road service?

A. Yes, freight road service. You cannot isolate the road expenses, and say that some of the expenses are all chargeable to a particular shipment, unless they are common to everything that moves in the train at the same time.

Q. But your concept of out-of-pocket costs as reflected by your testimony would include those train expenses as out-of-pocket to the extent they vary with traffic?

A. That is right.

Q. Proceed.

Com. Splawn: Let me ask you a question before you go ahead:

By Com. Splawn:

Q. After you get your out-of-pocket costs, then you designate them as the direct costs, do you?

A. Yes. I use those words indiscriminately.

Q. The variable costs?

A. That is right.

Q. You put interest on the capital invested in the indirect cost, or designate it as an indirect cost, is that right?

A. Most of the interest, yes.

Q. But some of it accrues in this out-of-pocket?

[fol. 4448] A. Yes.

Q. It varies?

A. That would be my opinion.

By Chairman Aitchison:

Q. For instance, the interest on equipment trusts would be allocated directly to freight and passenger according to the character of the service?

A. Well, that is true.

Q. If you were dealing with the California refrigeration charges, the rates on acidulous fruits, would you attempt to give us an allocation or apportionment of the costs including the value of the property devoted to the particular service?

A. Yes; for the total operations I would.

Chairman Aitchison: Proceed.

By Mr. Plunkett:

Q. Will you please proceed with your answer, Dr. Day.

A. In his study—I am speaking now of the proportion of the expenses that are non-variable—the various levels are all derived from Cost Level II and the percentage relations are indicated in Exhibits Nos. 2 and 3. For the United States as a whole, Cost Level I is said to be approximately 73.8 per cent of Cost Level II as developed for carload traffic. Cost Level V-b which includes operating expenses, rents, taxes, passenger and less than carload deficiencies, and 5¾ per cent return on total value, is shown as 165 [fol. 4449] per cent of Cost Level II. Consequently, divid-

ing 73.8 per cent by 165 per cent, I find Cost Level V-b divides approximately 45 per cent out-of-pocket cost, and the balance of 55 per cent, fixed cost. The fixed expense varies from a low of 50 per cent of the total in the Pocahontas territory to a high of 60 per cent in the New England territory. At Cost Level III-b, which covers carload operating expenses, rents, taxes, plus a distribution of 5¾ per cent return on total investment but not including deficiencies of passenger and less than carload operation, the expenses divide 56 per cent out-of-pocket cost, and 44 per cent fixed expense for the United States as a whole. From these figures it is seen that the fixed expenses in the railway industry constitute a very large part of the total expenses. Therefore, the distribution of fixed expense as a cost among the shipments is not a matter of mild concern.

Q. Are there many optional bases open to the analyst for distributing the fixed expenses?

A. Yes. There are many ways, all arbitrary, open to the analyst, but they are all limited to the use of a mathematical average. Dr. Edwards has used two bases, one in Exhibit 3 and another very different one in Exhibit 13.

Q. I understand it is your position that the analyst should not distribute the fixed expenses at all, is that right?

A. Not, representing them as the cost of specific operations.

[fol. 4450] Q. Is the resulting cost ascertainment for any particular shipment materially affected by the arbitrary basis adopted by the analyst?

A. Yes, the results are considerably varied, depending upon how the fixed expenses are prorated. For example, costs of $3.67 and $2.63 per 100 pounds are found on Exhibits Nos. 3 and 13 respectively for shipments of 20,000 pounds moving 3,000 miles in refrigerator cars.

Chairman Aitchison: I would like to go back to the Doctor's previous answer.

By Chairman Aitchison:

Q. While, as I understand your position, the fixed expenses may not be distributed by the analyst for the purpose of getting at the cost of particular services or even classes of service, what have you to say with respect to the distribution of the fixed expenses according to some appropriate relation with no constants, when the question

is as to the relative total cost including both fixed and variable between different areas?

A. Well, if you are just dealing with the total costs, those are shown in the accounts.

Q. The totals are shown in the accounts, but not as related to the cost of performing the service.

A. That is where I say you cannot find the cost of particular services by distributing them because there is no recognized formula for doing that. There is no justification. [fol. 4451] Q. How would you go about it to compare the costs as related to service, fixed and variable, in two territories?

A. Well, I would not attempt to determine the relative total cost of performing like services in two territories, because it involves this arbitrary treatment.

Q. You feel content, then, to stop when you have allocated and apportioned variable costs?

A. I think that is as far as you can go in determining costs, is to determine the variable costs.

Q. Without giving consideration to the needs for funds to meet the fixed items which are in fact met?

A. Well, I think we have to deal with that in a practical manner. During our depressions we did not raise the rates, that is the specific rates. We rather did the other. We reduced our rates and tried to stimulate traffic and attract it to our line. We did not consider that as part of our cost. We were benefited if we could attract more revenue than we would add in the way of direct expenses.

Chairman Aitchison: What I am getting at is this:

By Chairman Aitchison:

Q. We have a very practical problem here, as you see. Most of your line is in a territory that is sort of neutral. Suppose we find that in one territory the variable costs are on a distinctly lower level than in another territory, but that when we come to consider the fixed costs, the situation is reversed, and whether we treat [fol. 4452] it by mile of line or square miles of territory served or gross ton miles or any other factor which you can think of as appropriate, the fixed costs in the territory having the lowest variable costs are the higher; now, sir, as a practical matter, how can we offset and deal with those two items under your theory?

A. In the class rates, where we are dealing with the highest rated traffic, there are so many other factors that would enter into what is a proper determination of class rates, costs, out-of-pocket costs particularly, that I cannot see that it would have any bearing on the subject.

Q. Well, now, we very frequently have said that this territory or the other rated territory is a territory of higher operating costs; we have been careless and have not distinguished between the variable and the fixed; we have had in mind total costs. Now, on what basis could a statement of that sort be predicated according to your theory? I am not talking about fixing class rates. I am just asking a question as to whether one territory ought to be considered a higher rated territory than another.

A. Well, it is my personal view that that judgment should be formed on the basis of the out-of-pocket costs.

Chairman Aitchison: Thank you. It is now time to suspend. We will suspend until 1:30 P. M.

(At 12:30 o'clock P. M. recess taken to 1:30 P. M.)

[fol. 4453] Afternoon Session

The hearing was resumed pursuant to recess.

1:30 o'clock P. M.

Chairman Aitchison: Please proceed.

Mr. Plunkett: Mr. Day.

CLARENCE E. DAY resumed:

Direct examination (Cont'd).

By Mr. Plunkett:

Q. Before the recess, Professor, you had pointed out that in Exhibit 3 Dr. Edwards had found that it cost $3.67 per 100 pounds, and in Exhibit 13, $2.63, to haul a shipment of 20,000 pounds 3,000 miles in a refrigerator car, a difference of more than $1 per hundredweight; and I think you had also pointed out that the difference was due to the different method of handling the fixed expenses. How are the fixed expenses dealt with in Exhibits 2 and 3?

A. In the case of carload shipments, the fixed burden is subdivided and allocated to carloads, car miles and gross

ton miles. A maze of calculations in some instances is required in order to divide and subdivide particular items of expense and assign definite portions to each of the three named units.

For example, maintenance of roadway buildings is admittedly a purely fixed burden which is in no wise changed or affected by car miles or any other measure of passing [fol. 4454] traffic.

This expense is divided in Dr. Edwards' formula into seven parts and finally consolidated into three groups of expenses; one part is assumed variable with gross ton miles, another with loaded car miles, and another with less than carload tons. The fact remains that the cost of maintaining roadway buildings is not varied in the least by any particular movement and the expense is no real part of the outlay made for such.

A large variety of bases, all more or less complicated are adopted for allocating other fixed expenses carried in the accounts to these same operations without any particular merit to justify their choice.

Q. Does Dr. Edwards' formula charge these subdivisions of fixed expenses to shipments in Exhibit 3 in proportion to gross ton miles, car miles and carloads, in the case of carload shipments?

A. Yes; the burden of fixed expenses which are related to car miles, to gross ton miles, and to carloads are respectively charged in proportion to these units. Accordingly, any difference in the quantum of either one of these units involved in a particular shipment will vary the amount of assessments to cover fixed expenses.

Q. In your opinion, is any good purpose served by breaking up the fixed expenses and applying them on indivjdual [fol. 4455] shipments through the medium of carloads, car miles and gross ton miles?

A. I can think of none. For example, no good reason is apparent to me why empty car miles to and from loadings should be assessed with fixed charges. Hauling empty cars about is not a source of revenue; nor is the fixed expense affected by the number of empty car miles involved.

By Chairman Aitchison:

Q. Let me see if I get that. In various cases, such as the California Fruit Cases, referring to the showing of empty car miles hauled as compared with loaded car miles hauled: Am I to gather that you do not think that is significant?

A. It is not significant in the out-of-pocket——

By Mr. Plunkett:

Q. Do you mean, it is significant?

A. I am not sure that I was able to catch all of your question, Mr. Chairman.

Chairman Aitchison: Read it.

(Question read.)

Chairman Aitchison: That is not quite correct, but it will do.

A. I think it is significant.

By Chairman Aitchison:

Q. How do you justify that, then, or reconcile that with the statement that hauling empty cars about is not a source of revenue?

A. I had in mind this, that he has saddled onto the move-
[fol. 4456] ment of empty cars, the fixed expenses, about half the total expenses, and they are supposed to follow the number of empty car miles. I may say, I will deal with that subject a little later on in my testimony, Mr. Chairman, I think more fully than I can right now.

Q. Would you not say this, that if there were not any empty movement necessary, the amount of equipment which would be needed, would be less?

A. That is right.

Q. That would affect the fixed charges, would it not?

A. No, sir, not as I would construe fixed charges.

Q. Well——

A. The fixed charge on the car itself, as represented by the car itself,—is that what you are speaking of?

Q. The return on the value of the car.

A. Yes.

Q. You would have to have double the number of cars, because you are only able to get a 50 per cent utilization of your car miles.

A. Well that goes to the division of expenses between fixed and variable, and if you are asking me now whether I would consider that as a variable, I would say that the investment in the car itself would be considered a variable expense.

Q. Would be?

A. Yes, sir.

[fol. 4457] Chairman Aitchison: All right.

By Mr. Plunkett:

Q. But your point, Professor, is that to the extent that expenses are fixed expenses, you do not believe they should be apportioned on the basis of empty car miles; is that correct?

A. Yes, sir, that is right. Dr. Edwards has included some interest on investment, but this percentage that I am talking about is over and above the interest that he has included in his set-up.

Q. The 112 per cent?

A. Yes.

Mr. Smelker: Just one question at this point for clarification, if the Commission please.

By Mr. Smelker:

Q. Your criticisms, Professor Day, are directed, as I understand it, to Dr. Edwards' Exhibit No. 3, are they not?

A. Yes.

Q. And not to his Exhibit 13?

A. So far, yes, sir.

Mr. Smelker: Thank you.

By Mr. Plunkett:

Q. Are irrational conclusions reached with respect to costs when the fixed expenses are divided mathematically among shipments?

A. Yes, when revenue needs to cover fixed expenses are computed mathematically in any manner, the results will be [fol. 4458] quite inconsistent and at variance with the revenue needs ascertained from practical consideration.

Q. Have you in mind any such examples when overhead is distributed as it is in Exhibit No. 3?

A. Yes. As an example, a full distribution of charges as made in Exhibit No. 3, Table 83, to lettuce and melons in 20,000 pound shipments moving from California to New York; that is, including all expenses covered by Cost Level V-b indicates an approximate cost of $4.40 per hundredweight.

(The original figure read into the record by the witness was $4.)

The rate is $1.84. The corresponding cost on oranges in 36,000 pound shipments is about $2.50 where the rate is $1.42. On peaches, the cost is $3.20 where the rate is $1.63. In these illustrations, the cost is 218 per cent of the rate on lettuce and melons; 176 per cent on oranges, and 196 per cent on peaches. Manifestly, the above distributed figures are not the costs of hauling these commodities for, if they were, the Western railroads which rely so greatly on this traffic for their income would soon go broke.

Q. If costs based on any mathematical distribution of fixed charges, however made, were accepted by the traffic department and rates were made in accordance therewith, what would be the effect on the resources of the railroads, [fol. 4459] in your opinion?

A. It would be disastrous for the following reasons: A mathematical distribution of fixed charges would produce some average or other for each shipment. If any traffic should be refused that would pay more than its real cost, but less than a mathematically computed average including all overhead expenses, such as that determined for lettuce and oranges above, there will be a loss.

In these instances, the net loss will be represented by the difference between the gross revenue from the traffic retained and its real or out-of-pocket cost. Also, if a rate should be increased to cover its fair share of the overhead expenses as above indicated and the resulting rate should be more than the traffic could bear, there would also be a loss. In this latter case, the volume of movement would shrink and less income would be earned to cover fixed expenses than would be earned at the lower rate. Finally, if the rates are reduced on commodities which do move freely at higher than the mathematically distributed expenses, the revenues will be needlessly dissipated. All three of these losses would be operative if the rates on various ship-

ments were changed to accord with Dr. Edwards' cost tables and the change would wreck the railroads.

Q. Have you made any comparison of the cost displayed by the tables in Exhibit No. 3 in order to bring into the light [fol. 4460] some of the fallacious ideas of costs that are implicated therein?

A. I have. With that objective in mind I have made a few comparisons based on his costs within New England territory at Cost Level V-b. I have made these comparisons based on this cost level on the presumption that the class rate traffic being the highest rated traffic, will be viewed in the light of the highest cost level. The examples that I have in mind are contained in the first sheet of my exhibit.

Mr. Plunkett: If the Commission please, may Mr. Day's exhibit be identified at this time.

Chairman Aitchison: 192.

(Exhibit 192, Witness Day, marked for identification.)

The Witness: This sheet is entitled "Examples of Revenue Needs from Various Carload Shipments Required According to Exhibit No. 3 to Cover Costs Included at Cost Level V-b."

By Mr. Plunkett:

Q. Please refer to Example 1 and say how much less revenue is needed from the second ten-tons loaded in a box car as compared with the first ten-tons when both shipments are hauled 300 miles?

A. $11.53 additional revenue for the second ten-tons is needed as compared with $105.28 needed for the first ten-tons.

[fol. 4461] Chairman Aitchison: Just a moment. Read that statement again, please.

(Answer read.)

By Chairman Aitchison:

Q. Figured on a cost per ton load?

A. Ten-ton load.

Q. How?

A. A ten-ton load.

By Mr. Plunkett:

Q. You are comparing the ten-ton load with the twenty-ton load, are you not, Mr. Day?

A. Yes.

Chairman Aitchison: I see.

The Witness: An addition-- ten tons.

Mr. Plunkett: That is where you get the second ten tons.

Chairman Aitchison: Yes.

By Mr. Plunkett:

Q. Proceed.

A. The revenue needs from the second 10-tons loaded in the car are 89 per cent less than that needed from the first 10-tons.

Chairman Aitchison: Just a moment. The balance of this page is just a development of the same idea, is it not, with the same result?

Mr. Plunkett: I think that could be merely copied into the record, without being read.

Chairman Aitchison: Well, it is in the exhibit, is it [fol. 4462] not?

Mr. Plunkett: He is further developing what is shown on page 1.

The Witness: I think it needs a little explanation, as I proceed.

Mr. Plunkett: Will you pick out that portion of your statement, then.

Mr. J. R. Bell: It will all be copied into the record, however, will it not?

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: Continue.

By Mr. Plunkett:

Q. Now, refer to Example II—resuming at the top of page 8—and say how much the revenue needs are increased when two cars are substituted for one car in hauling 20-tons 300 miles in box cars?

A. The substitution of two for one car adds $93.75 per carload to the revenue needs, or about 80 per cent.

Q. In terms of the added car miles, how much are the revenue needs increased?

A. The increase in revenue needs is at the rate of 24.3 cents per added car mile, loaded and empty. The empty car mile ratio being 28.4 per cent in this territory and the haul 300 miles, the added car miles amount to 385.2 miles.

Q. If the rates should be increased at the rate of 24.3 [fol. 4463] cents per car mile, loaded or empty, how would the substitution of two for one cars affect the carriers?

A. The carriers would be benefitted if the rates were so adjusted, that is, if they could influence the shippers to substitute two for one cars. In earning 24.3 cents per car mile, loaded or empty, it would be earning 60 per cent more revenue per car mile than that earned by all Class I railroads in the United States for hauling cars and contents as an average.

Q. You have said how much the needs are affected by an increase of 10-tons per car and how much by the substitution of two for one cars. Will you say for the benefit of the record how these allowances in revenue needs compare?

A. The increase in revenue needs added on account one added car is eight times as much as that added to account of 10-tons of added lading.

Q. How many tons may be added in a car, the haul being 300 miles, without increasing revenue needs more than that required because of the use of another car, according to the tables?

A. According to Example 1, the needs as computed by Dr. Edwards increase at the rate of $1.153 for each added ton. 81 tons may be added in the car to build up revenue needs equal to the allowance of $93.75 which is made in the table on account of one added car.

[fol. 4464] By Com. Splawn:

Q. Is this the out-of-pocket cost, that you are speaking of now?

A. No, sir. This is the full allocation of expenses, on Exhibit 3.

Q. Oh, I see. And you are just stating the effect of that, are you?

A. Pardon me?

Q. You are telling us the effect of that?

A. Yes, sir. I am demonstrating how much of the expenses are saddled onto this moving of equipment back.

By Mr. Plunkett:

Q. Refer to Table 1 for box cars and Table 3 for gondolas in Exhibit 3 and say what factor or factors cause the differences in the revenue needs represented by these two scales?

A. The difference in these two scales is entirely due to the assumption made with respect to the ratio of empty to loaded car miles. The cost for the same load and same length of haul is higher in Table 3 as compared with Table 1 for the only reason that gondolas are assumed to have a higher ratio of empty to loaded as compared with box cars. The assumed ratios in Tables 1 and 3 are 28.4 per cent and 88.0 per cent respectively. The computed difference in the revenue needs flows entirely from the amount of charges that are associated with the movement of empty equipment to and from loading.

[fol. 4465] Q. Now refer to Example *III* and say how much is added to the revenue needs in Table 3 as compared with Table 1 when 20-tons is hauled 300 miles?

A. $26.04.

Q. What is the rate at which the revenue needs are increased in terms of the added empty car miles?

A. The revenue needs are increased at the rate of 14.6 cents per added empty car mile. The difference in assumed empty car miles for these two classes of equipment is 178.8 miles—300 times the difference in the percentage ratio, 0.880—0.284.

Q. What is the percentage increase in the revenue needs for the same shipment?

A. The revenue needs using the gondola car are 22 per cent greater than the needs using the box cars.

Q. Now refer to Example IV and say how much payload may be hauled 300 miles in box cars without exceeding the computed revenue needs of 10-tons hauled the same distance in gondolas?

A. 32.1 tons may be hauled in box cars for the same revenue needs as for 10-tons in gondolas.

Q. Refer to the fifth example and say how much according to the tables may be hauled in box cars to cost the same as 10-tons in refrigerator cars?

A. In this example, the revenue need from 10-tons of [fol. 4466] payload in a refrigerator car is as great as that for 42.8 tons of payload hauled in box cars. In other words, over 4 times as much payload can be hauled in box cars as in refrigerator cars for the same total cost.

Q. Are these typical examples?

A. Yes, all tables for all hauls show these same general extraordinary cost relations.

Q. Will you explain the mathematics which underlie these extraordinary cost relations?

A. It lies in the fact that the overhead charges are determined percentagewise and in relation to certain functional operations. As before stated, all of the scales for moving commodities in carlots are based on expenses which are allocated or apportioned to three functional operations.

For example, it may be shown that all of the carload scales in Exhibit No. 3 on Tables 1, 2, 3 and 5, for the New England territory may be computed by pricing three functional operations at the following rates: Cost per carload, $19.854; cost per car mile, 3.276 cents; and cost per gross ton mile, 0.216 cents.

These cost factors cover all operating expenses, rents, taxes; being designated as Cost Level II. The overhead expenses are assumed to be definite percentages of these allocations. The out-of-pocket proportion of above expenses is said to average 73.8 per cent, see Exhibit No. 2, [fol. 4467] page 78, and the balance, or 26.2 per cent is overhead operating expenses and taxes.

The other overhead charges added to reach Cost Level V-b amount to 86 per cent of these costs, see Exhibit No. 3, page 2, footnote 1; hence, the percentage of Cost Level II factors that have been added to cover overhead included at Cost Level V-b is the sum of 26.2 per cent and 86 per cent, or 112.2 per cent.

Accordingly, the amount of charges that have been added in New England Territory to the out-of-pocket cost of the various shipments to cover overhead expenses included at Cost Level V-b, may be determined by use of the following three factors of revenue needs and corresponding number of units of performance involved: Carload charge, $22.27; car mile charge, 3.675 cents; and gross ton mile charge, 0.243 cents.

Q. Where, in these figures, is the payload directly involved with overhead expenses?

A. Only in the last item; namely, the gross ton mile item. The payload enters the calculations of the overhead charges by adding to the number of gross ton miles. All other overhead charges are directly charged to the equipment itself, and its movement.

Q. Have you made a simple calculation which indicates the relative amount of overhead charges that are associated [fol. 4468] with the equipment itself as compared with that associated directly with the payload?

A. Yes. As an example, I have divided the revenue needs to cover fixed expenses for a carload of 10-tons carried 300 miles in gondolas between those which are associated with the equipment and those associated with payload itself on Exhibit No. 192, sheet 2. This page is entitled, "Division of Fixed and Overhead Charges Made in Exhibit No. 3 between that Associated with Equipment and that with Payload."

Q. What do you find?

A. In this example, $71.92 of the revenue needs to cover fixed expenses is associated with the movement of the equipment and only $7.29 is charged directly to the payload. The first amount is needed according to Dr. Edwards' formula, Exhibit 3, whether 10-tons or any other quantity is shipped, that is, for a 300-mile haul in gondolas. Less than 10 per cent of the total revenue needs is assumed to change in this example with the size of the shipment.

Q. The primary operation of a carrier is that of transporting goods, is it not?

A. Yes.

Q. The handling of cars in terminals, transporting cars before and after completion of the service and transporting cars in linehaul service are all secondary to the primary operations, are they not?

[fol. 4469] A. Yes. The tare tons, car miles and cars are as purely secondary to the main purpose of transporting goods as all other services employed.

Q. Does Dr. Edwards' formula in Exhibit 3 disregard the secondary aspects of these physical operations?

A. Yes, sir, it does. The formula allocates overhead expenses to these physical operations on Exhibit 3 as if the principal business of the carrier was to move equipment about.

Q. Do you ascribe the remarkable comparisons you have shown on Exhibit 3 to the failure on the part of Dr. Edwards to appreciate this secondary aspect of the cars, car miles and ton miles?

A. I do. Dr. Edwards' requirements of revenue needs in Exhibit 3 lie too heavily upon the impediments of the carriers and too lightly upon the value of the service rendered to the shipper.

By Chairman Aitchison:

Q. Has Dr. Edwards attempted to compute the value-of-service element, are we to understand?

A. No, not the value of service.

Q. Well, then, you should correct your statement, should you not, and instead of saying "lie too lightly upon the value of the services rendered" you should say that they do not bear on the value of the service at all.

A. Well, that depends on how you construe the term [fol. 4470] "revenue needs." When we speak of revenue needs, I associate that with what he wants to fix the rate at, the load at which he wishes to fix the rate, or at which the rate should be fixed.

Q. But I am trying to find out how you understood the purpose of his exhibit. Was it to attempt in any way, as you understood it, to equate or weight his cost to compensate for the item which we commonly, and rather narrowly, call "value of service"?

A. No, sir; he has not considered that at all.

By Com. Alldredge:

Q. Do you use the term "value of service rendered to the shipper" here as synonymous with your previous answer, that the primary operation of a carrier is that of transporting goods?

A. The value of the service to the shipper, is to have his goods transported from A to B.

Q. And did you use that term equivalently, value-of-service, to that operation, or that service, the transportation of goods?

A. Yes, sir.

Com. Alldredge: Continue.

By Chairman Aitchison:

Q. There are three or four items that are used by economists, in arriving at the value of the service, are there not?

A. It might be worth more to one shipper to have his [fol. 4471] goods transported from A to B, than it would be to another shipper, with the same class of goods; or it might be worth more to him to have his class of goods transported, than some other class of goods.

Q. And he might be able to get a substitute service, might he not?

A. Yes, sir, that is right. In the final analysis, if he has a substitute service, that is the value of the service to him.

Q. Including his doing it himself.

A. Yes, sir.

Q. So that we have, at least four different types of value of service, have we not?

A. Yes.

By Mr. Plunkett:

Q. Professor, would it not be better if you were to strike out the words "value of the" and make it read "too lightly upon the service rendered to the shipper," rather than "the value of the service rendered to the shipper"?

A. Why, I think that would possibly be all right, yes, sir, to just strike that out.

Q. Now, for the benefit of the record, will you please repeat the answer as you wish to have it appear in the record.

A. Dr. Edwards' requirements of revenue needs in Exhibit 3 lie too heavily upon the impediments of the carriers [fol. 4472] and too lightly upon the service rendered to the shipper.

Q. Continue.

A. As before stated, in connection with Exhibit No. 192, sheet 2, less than 10 per cent of the overhead charges in that example take into consideration the benefits received by the shipper.

Q. Does Dr. Edwards' Exhibit 13 make a different allocation of the non-variable charges to the various shipments?

A. It does.

Q. What is the principal difference between the allocation of non-variable expenses made in Exhibit 13 as compared with Exhibit 3?

A. In the Exhibit 3 study the constant expenses are apportioned on the basis of cost developed at Cost Level II. In the Exhibit 13 study a part of the constant expenses is distributed equally over all revenue tons and the remaining part is distributed equally over the revenue net ton miles.

Q. Is there a material difference between the cost computed for identical shipments, which results from the difference in the formula itself?

A. There is a marked difference for those shipments which differ from the average, that is to say, for very light and very heavy loads or for very short and very long hauls, the computed differences are great.

My Exhibit 192, page 8, is prepared to show the extent [fol. 4473] of these variations. Page 8 is entitled "Comparison of the allocations of non-variable charges in Territory 12, included with Cost Level V-a, made to particular shipments in Exhibit 3 with those made in Exhibit 13." In this exhibit, costs included at cost level V-a are shown and the difference in the resulting cost is entirely due to the allocations of non-variable expenses made by each formula.

There is no difference in the two formulas of consequence affecting Cost Level I, the out-of-pocket cost determination. It will be observed that the difference between two formulas relates to particularly the size of load and class of equipment, and little difference relates to the length of haul. The costs, for the same distances, are materially greater on Exhibit 3 when the loads are light and slightly greater on Exhibit 13 when the loads are heavy and this is true for all distances involved in the comparisons.

I would like at this point, if you please, to call attention to some minor errors that appear in the exhibit as it now is.

Chairman Aitchison: Which one?

Mr. J. R. Bell: Page 8.

The Witness: Yes.

By Mr. Plunkett:

Q. Page 8 of Exhibit 192, for identification?

[fol. 4474] A. Yes, sir. They are more or less inconsequential, I would say, and I do not know whether it is worth while to take the time of the hearing to call attention to them.

By Chairman Aitchison:

Q. What are they?

A. Well, in column (g), the first three percentages should be changed to 286 per cent; 298 per cent——

By Mr. Plunkett:

Q. Did you say, 236?

A. No; 286 per cent; 298 per cent; and 292 per cent. Then a little further down, where it shows 214 per cent, that should be changed to 111 per cent.

Q. In the second group?

A. Yes, sir.

Q. Yes?

A. And also the second item below, where it now reads 237 per cent, should read 249 per cent. Then in column (h), the last per cent should be 126 per cent, instead of 122 per cent.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: On the record. Continue.

By Mr. Plunkett:

Q. How different are the costs obtained for the same shipment on the two exhibits?

[fol. 4475] A. The differences are indicated in Columns (e) and (f) of Exhibit 192, page 8, where it shows the amounts allocated to cover non-variable charges; and in columns (g) and (h) where it shows the percentage relationship of these allocations. It shows for 10-ton loads that about three times as much is allocated by Exhibit 3 formula to cover non-variable expenses as that allocated by Exhibit 13 formula. On the other hand, for 50-ton loads about one and one-half times as much is allocated by the Exhibit 13 formula.

Q. How much do Exhibits Nos. 3 and 13 each indicate the terminal cost to be for one carload in the New England Territory?

A. Exhibit No. 3 indicates the terminal cost to be $32.76 per carload and it is the same for all shipments moving in railroad owned equipment, regardless of load. Exhibit No.

13 shows the same service to cost from $18.79 per carload for 5-ton loads to $21.60 for 70-ton loads.

Q. Have you made any comparisons of Exhibits 3 and 13 costs as they apply to some actual transcontinental shipments?

A. Yes, sir. I have made such comparisons on Exhibit No. 192, page 3, entitled "Shipments of Transcontinental Traffic comparing through rate and costs as computed on Exhibits 3 and 13 in I. C. C. 28300 for Territory No. 12—Total United States." Column (h) shows the costs as computed on Exhibit 3, and (i) as computed on Exhibit 13, when [fol. 4476] the shipment is moved in minimum loads specified in the tariff. Columns (k) and (l) show the corresponding costs for the actual load carried.

It will be noted on the first line, that the cost of hauling lettuce, according to Exhibit 3, is $1.12 per hundred pounds, or 40 per cent more than that computed by Exhibit 13 formula. This example is representative of difference to be found in the formula treatment where lighter than average loads are involved.

On line 11, Exhibit 13, costs are 14 cents per hundred pounds or 18 per cent more than the Exhibit 3 costs for a 40-ton load, and 18 cents or 27 per cent more for a 50.3 ton load. In passing, it will be noted, comparing column (d) and column (g), that in most instances the indicated out-of-pocket costs, not including loss and damages, are substantially greater than the revenues.

By Chairman Aitchison:

Q. Let me ask you a question right there.

A. Yes, sir.

Q. Were you in the Deciduous Fruit Case?

A. No, sir.

Q. There was a cost study on citrus fruit presented in that case by the California lines, on transcontinental hauls. I am just wondering how the cost then computed would compare with this.

[fol. 4477] A. I have not made the comparison.

Chairman Aitchison: Very well.

By Mr. J. R. Bell:

Q. When you refer to revenue there, Professor Day, you mean the going rates, do you not?

A. Yes, sir,—or rather, no,—well, what I mean is this: The revenue is the money that is produced by the rates.

Q. That is what I mean. When you refer to the carriers' revenues, you mean the revenues that are received by the carriers from the application of the going rates.

A. Yes, sir.

Chairman Aitchison: Proceed.

By Mr. Plunkett:

Q. What conclusions do you draw from the difference in costs as derived from Exhibits 3 and 13?

A. I conclude that the cost ascertainments, to say the least, are very indefinite, and too indefinite for use in drawing conclusions with respect to the rail costs of performing like service in the two territories.

Unless there is some more definite answer to the question of cost of hauling the various shipments or performing the different services obtainable from system records, such a cost comparison is impossible, in my opinion.

To be more specific, if one is required to compare the cost of hauling five tons 300 miles in box cars in the New England Territory with that in the Pocahontas Territory, he should not have to speculate whether the cost is 57.3 cents [fol. 4478] or 87.9 cents in the New England Territory and speculate whether the cost is 36.3 cents or 52.5 cents in the Pocahontas Territory. See Exhibit 12, page 6.

Q. Dr. Edwards shows on Table 3 of Exhibit 12 that the costs obtained for the various territories in Exhibits 3 and 13 are changed in some degree with the weight of load and class of equipment, but their order is generally unchanged when arranged in relationship to costs. Does that prove that the relative costs of performing like services in the various territories are generally the same as that found?

A. In my opinion it does not. The difference in the indices is not greater for the various shipments for the fact that both Exhibits 3 and 13 build a pattern around the composite average of handling all traffic.

Any territory that has a high general average cost will show by either formula high costs for all other shipments and vice versa. Pocahontas Territory has a low composite average cost because of the relatively small number of service units required to haul the coal traffic.

On the other hand, New England composite average is high because of the relatively greater amount of service required by the manufactured shipments. Because of the pattern, both formulas represent low costs in Pocahontas Territory and high costs for all shipments in the New England Territory.

[fol. 4479] In effect, both formulas represent the costs of the various shipments as being some common factor of a composite average. The similarity of the indices is due to the fact that common factors of things stand in the same relation as the things themselves. For example, shipments that cost four times the averages in representative territories will stand in the same relation to one another as the averages themselves.

The reason why the indices are not precisely the same is due to the slight variation in the factors used for projecting the costs. For example, Dr. Edwards' shows on Exhibit 12, Table 6, the cost of five and twenty-five tons in each territory, computed by both formulas. From these it will be noted that the pattern in Exhibit 3 formula indicates the cost of a 5-ton shipment to be about four times as much per hundred pounds as a 25-ton shipment, varying slightly in different territories.

Also, Exhibit 13 formula shows these costs are about three times as great with slight variations. Except for the slight variation in the factors, the indices for all shipments would be precisely the same as that for the 25-ton load.

Q. What do you understand these indices prove?

A. The indices merely prove the approximate relationship between the composite average cost of hauling the [fol. 4480] entire traffic in the respective territories and not the relative cost of hauling the same class of shipments.

Before any conclusions with respect to the cost of hauling manufactured products can be reached, for example, recognition must be given to the fact that this class of traffic requires services that are different from the general run of all traffic. Only three variables relating to carload traffic moving in railroad owned equipment, are recognized by these formulas. A differentiation between the various classes of traffic requires more refinements than that provided by three variables.

Chairman Aitchison: Now, just a moment, right there. I would like to have you straighten me out on this matter of rates that you have been quoting us on these fruits. Turn back to page 3 of your exhibit No. 192, and also turn back to page 6 of your statement.

Mr. Plunkett: A little below the middle of the page,—is that what your Honor is referring to?

Chairman Aitchison: Yes.

Mr. Plunkett: On page 6.

Chairman Aitchison: Yes.

By Chairman Aitchison:

Q. You say there "The corresponding cost on oranges in 36,000 pound shipments is about $2.50 where the rate is $1.42."

A. Yes.

[fol. 4481] Q. That seems to check with line 3 on page 3, as far as the rate is concerned.

A. Yes.

Q. But the cost shown in column (k) and column (o) is $2.34 on one basis, and $1.90 on the other.

A. There is a different cost level.

By Mr. Plunkett:

Q. The one is V-b and the other is V-a, is it not?

A. Yes, sir, there is a different cost level.

By Chairman Aitchison:

Q. How did you get the $2.50?

A. Cost level V has 5¾ per cent return on investment in the stated costs, and cost level V-a has 4 per cent return on investment.

Q. Oh, I see. Well, does that make a difference of 60 cents?

A. Yes, sir—per 100 pounds.

Q. You say it is about $2.50.

A. Well, I would have to recheck the figures, Mr. Chairman, to answer you definitely. I will do that, however.

Q. Very well. Now, there is just one other question. You also say "on peaches, the cost is $3.20 where the rate is $1.63."

A. Yes.

Q. Or rather—pardon me. Pears are what I intended to refer to. I had the peaches and pears mixed up. I notice that you have pears in your exhibit twice, once in line 10, [fol. 4482] and again in line 15, the difference being that in the first instance, in line 10, you have a 34,000 pound minimum with a rate of $1.43, and in the second case, in line 15, you have a 25,700 pound minimum with a rate of $1.75.

A. There is a dual rate there.

Q. I was coming to that. But where the rate is $1.63, with a 27,500 pound minimum, the cost is $3.20, on pears; but do not peaches take the same rate?

A. I cannot say.

Q. Well, in any event, you have shown a rate there of $1.63 on pears, which is the same.

A. We use a higher minimum.

Mr. Plunkett: No.

By Chairman Aitchison:

Q. A lower minimum, is it not?

A. Yes.

Q. Yes. Now if you apply the lower minimum on peaches, as you have, I would like to have you balance that out as against your statement in the answer that you made, where the cost is $3.20.

Mr. Plunkett: That is $3.07 in column (k). The difference would be due to the 4 per cent and the 5¾ per cent.

Chairman Aitchison: He is not able to get it up to $3.20, whichever column he takes.

Mr. Plunkett: Well, if your Honor please, he shows 307 [fol. 4483] in column (k) on page 3 of his exhibit, which corresponds to his statement on page 6 of his prepared statement, except that in the table he uses V-a which is the 4 per cent, and on page 6 he has taken V-b, which is the 5¾ per cent, making the difference between 320 and 307.

Chairman Aitchison: Well, I do not understand it, and I would like to have the witness explain it.

By Chairman Aitchison:

Q. How do you get your $2.20, assuming that the same rate applies on pears as on peaches? You have got the same rate on plums, I notice, also.

A. Well, I think it would save time, Mr. Chairman, if you would allow me——

Mr. J. R. Bell: A little louder, please.

A. I say, I think it would save time if you would allow me——

By Chairman Aitchison:

Q. To do that later?

A. —to check that afterward.

Chairman Aitchison: Very well. Do that between now and the Washington hearing.

Mr. J. R. Bell: Mr. Chairman, I do not know whether I will be at the Washington hearing or not, and I would like to ask the witness one further question in this connection.

By Mr. J. R. Bell:

Q. Professor Day, does not the difference lie in the fact that in your exhibit, on page 3, at the top, you use V-a and you use V-b, or refer to V-b, on page 6 of your statement? [fol. 4484] Is that not what brings about the difference?

A. I think that is the only difference, yes, sir. As I explained before, one of them, V-a, the V-a level, has a 4 per cent return on investment; and the other, the V-b level, has a 5¾ per cent return on investment.

Q. And that gives you the higher figure, does it not?

A. That gives you the higher cost.

By Chairman Aitchison:

Q. I would like to ask you, Doctor, to tell me whether or not, in the case of lettuce—or rather, in the case of peaches, it would make that amount of difference?

Mr. Plunkett: I think, if the Chairman pelase, that the witness can figure that out during the afternoon.

Chairman Aitchison: All right.

Mr. Plunkett: While we are putting in the testimony of the other witness.

Chairman Aitchison: Very well. I just wanted to be sure that he has some basis for the $1.63 rate. Continue.

By Mr. Plunkett:

Q. In the case of carload shipments, is each computed level of revenue needs contingent upon specific earnings from each and every other carload shipment?

A. Yes, sir. That is the premise upon which Dr. Edwards' tables are built. The tables and their derivatives are all calculated on the premise that every carload shipment satisfies its revenue needs as computed by the same formula.

[fol. 4485] Q. It is generally recognized that certain items of traffic are unable to pay as much as that required as an average to support the rail carriers in full vigor?

A. It is. Many commodities are unable to pay as much per unit as the average.

Q. Do the higher cost levels applicable to carload traffic in Exhibits Nos. 3 or 13, make allowances for deficiencies in the earnings of certain other classes of traffic?

A. Yes. The carload cost scales include allowances for the deficiencies in the earnings from less than carload and passenger services. The entire expenses are in effect distributed to carload, less than carload and passenger services and the shortcomings of the revenues from the two latter services in meeting the respective distributed sum are referred to as deficits. The sum of the deficits thus computed is assumed for the purpose of constructing carload cost scales to be a part of the cost of conducting those operations.

Q. On what theory is the deficit of one class of traffic said to be charged to another?

A. The deficits of less than carload and passenger services are said to be charged against carload services on the theory that if some services pay less than the full distribution of common charges, others must pay more.

Q. Do the scales recognize the deficiency of any carload [fol. 4486] traffic moving under rates depressed for one reason or another?

A. No; the need from each carload shipment is computed as if the yield from each other carload shipment satisfied its quota. His tables therefore ignore the fact that there is a great volume of traffic carried within the carload group at rates which do not satisfy the revenue requirements of his tables.

Q. Will you for illustrative purposes, refer to a few examples of commodities moving in carload quantities which do not meet the scale requirements and therefore create so-called deficits?

A. The rate on shipments of logs, 27.2 tons, from Springfield, Oregon, to Oswego, Oregon, a distance of 157 miles, is 5.1 cent per hundredweight, before Ex Parte 148 increases. According to Exhibit No. 3, Table 65, the cost including operating expenses, rents and taxes only, is 7.3 cents per hundredweight. The deficiency is 2.2 cents per hundredweight. The rate on logs from Idanha, Oregon, to Silverton, Oregon, a distance of 68 miles is 3.45 cents per hundredweight; whereas, the cost according to Table 65 is 5.50 cents per hundredweight, making a deficit of 2.05 cents per hundredweight. The average revenue earned by the Southern Pacific Company from its entire log traffic in 1939 was 2.24 cents per hundredweight, the average load [fol. 4487] being 37 tons. The average haul of all log traffic is not less than 60 miles, consequently the cost according to Table 65 of Exhibit No. 3 is 3.80 cents as compared with an average earning of 2.24 cents. The deficiency is 1.56 cents per hundredweight. For the 3,127,483 tons carried in 1939 by Southern Pacific Company, this deficiency alone amounts to approximately $1,000,000 before return on investment or less than carload and passenger deficiencies are considered.

By Com. Splawn:

Q. Perhaps that is the source of some of the financial difficulties that exist, because of loss on that traffic.

A. Well, I do not know.

Q. Just a mere recital of the rate does not prove that the estimate of cost was wrong, does it?

A. Oh, no, that does not prove.

Q. Dr. Edwards' estimate.

A. No.

By Chairman Aitchison:

Q. As a matter of fact, you know how logs are transported, do you not?

A. Pardon me?

Q. How are logs transported?

A. In log trains, mostly.

Q. Yes, on flat cars, or on log trucks.
A. Both ways, but mostly on flats.
Q. In trainload lots.
[fol. 4488] A. Yes, sir, in some instances. Some of them are in trainload lots, and others are with other traffic.

By Com. Alldredge:

Q. Do you know whether or not there are transit rates on logs?
A. I do not think that we have any transit rates on logs, Mr. Commissioner, but I am not altogether sure about that. I would not say definitely.
Q. They are just local rates?
A. Yes.
Q. Not tied up with the outbound movement of the lumber?
A. No, sir, they are not tied up with that, and that is one of our grievances. To points in the northwest, we get the unprofitable log haul, and the steamships get the main-line haul,—or they formerly did.

By Chairman Aitchison:

Q. Now, that they are not in trainload lots always may be true, but I notice that they run 10,000 tons rather steadily.
A. Yes.
Q. Would not 10,000 tons make a pretty good trainload, on the Silverton branch line?
A. That is scattered all over our system, though.
Q. Oh, I see. Well, how much was transported, if you know, from Idanha to Silverton?
A. I do not know. The figures that I have quoted were taken from our schedule, and they represent the total log [fol. 4489] movement.

By Mr. Plunkett:

Q. The schedule in the annual report?
A. Yes.

By Com. Splawn:

Q. Is the figure of 3 cents plus which you quoted there, of cost, the average on all traffic for your road?

A. No, sir. That is the cost that Dr. Edwards computes at cost level 2.

Q. Well, at cost level 2,—that is 4 per cent, is it?

Mr. J. R. Bell: There is no return there at all, is there?

The Witness: Just a moment, what was your question, please, Mr. Commissioner?

By Com. Splawn:

Q. My question is this: Is that for all of the traffic, an average cost, an average figure?

A. Yes, sir. For all of the log traffic it is 1.56 cents per hundred weight, there being a deficiency.

Mr. Plunkett: In other words——

Chairman Aitchison: Just a moment.

Mr. Plunkett: Pardon me.

By Com. Splawn:

Q. He has estimated the cost correctly for the log traffic then; is that correct?

A. His exhibit shows a cost for shipments moving in flat cars, for the various roads, and I have used what his tables show, which I assume applies to logs as well as other [fol. 4490] items.

Q. In flat cars.

A. Yes.

Q. The average——

A. For flat cars.

Q. If you take an average cost for all of the traffic in a certain type of equipment, would it not be supposed that some of it would have moved at less than that, and some of it at more?

A. Yes, sir, that is true. The costs are quite different, in different locations.

Q. You have some traffic where the cost is a good deal less, and where the rate is also less.

A. Oh, yes, exactly. These are the averages.

Q. Well, the average on logs out there, moving in train-load lots, is very low, is it not?

A. The average cost.

Q. Yes.

A. Yes, sir.

Q. What do you think it is?

A. Well?

Q. You know, do you not?

A. I think that our log rates are pretty close to our out-of-pocket cost, as far as that is concerned. Some of them are even, I believe, below our out-of-pocket cost.

[fol. 4491] Q. Well, now, if you add to the out-of-pocket cost these other things that Dr. Edwards has added, how much would that increase your out-of-pocket figure?

A. Well, it would just about double it; it would just about lift it to the cost level of *V*-b.

Q. So you and Dr. Edwards have not estimated the same cost, have you?

A. Pardon me?

Q. I say, you have estimated the out-of-pocket cost, which is just about what the rate is, you say——

A. That is for logs only.

Q. —and Dr. Edwards has estimated the average cost of everything that moves in flat cars; is that right?

A. No, Mr. Commissioner, that is not correct. I am talking about Dr. Edwards' procedure; I am not talking about out-of-pocket cost just at the present moment. I am talking about deficiencies. He has seen fit to consider the deficiencies of less than carload traffic and passenger traffic, but he has not seen fit to consider the deficiencies on these low-grade commodities; and I am trying to show you here how much lower the log traffic is below his level of cost. Therefore these are deficiencies that should be considered in connection with class-rated traffic, which is the highest rated traffic that we carry.

Q. Well, you were speaking a little while ago about his [fol. 4492] touching too lightly on the value of the service. If he had considered the value of the service and some of these other things, the result would not have been cost, but the rate which you would have charged the shippers, would it not?

A. Yes.

Q. Well, he was not trying to estimate the rate to charge the shipper, but he was merely undertaking to analyze the cost of handling the traffic, was he not?

A. Well, that I do not know. He says that these costs—or these scales are made for use in the fixing of class rates, if I understand it.

Q. He does not say that he is trying to find the rate which is to be charged the shipper, or anything of the kind. He

is just undertaking to analyze the cost to the railroads of handling the traffic for the charge that may be assessed; is that not right?

A. Well, I do not understand it that way, no, Mr. Commissioner. He made reference to them as revenue needs, and he has given us the measure of the revenue needs, so that I would say the presumption is that this is what the rate should be, under his premise, in order to satisfy the revenue needs from this course.

Q. Well, I do not understand that he has offered this as the rates which should be charged. Therefore your criti- [fol. 4493] cism that he does not consider value, and all of these other things, would seem to me at least to be rather inapplicable.

A. Well, I do not understand that he is saying what the rates should be, either, Mr. Commissioner, but I say that is not, for fixing rates, the proper test to apply in a class rate case.

Q. Well, it is an element that may be considered or argued, when fallible beings undertake to arrive at a rate; but is it the sort of criticism that will help us, merely to point out the deficiencies of his analysis as a cost analysis? In other words, if he has not pointed out satisfactorily the average cost, which is what he purports to do, we ought to know about that, certainly; but I say, will it be helpful to us simply to be told in that connection that he has neglected all of these other considerations which the Classification Committees have to bear in mind when they come to make rates?

A. I am very sorry, Mr. Commissioner, but I am afraid I have rather lost the thread of your discourse. Was that intended to be a question?

Com. Splawn: Well, that was my intention when I started out, but I may have made it a little bit complicated.

Mr. Plunkett: Could I suggest——

Com. Splawn: I think you understand what I am trying to get at. However, I will pass it.

[fol. 4494] Mr. Plunkett: If the Commission please, may I suggest that the reason, one of the reasons why we made the showing that Dr. Day has just made, was that in the opening paragraph of Dr. Edwards' Exhibit No. 2, he says, "The purpose of this study"—which is the one we have been considering—"is to provide territorial cost data that may

be used in determining the relative transportation cost in the respective rate territories, and that may be of aid in the development of territorial class rate scales."

We do not contend, or suggest, that those are the scales that ought to be prescribed. We have not offered this testimony on the theory that Dr. Edwards is proposing these rates.

Com. Splawn: You understand I am sure what I am asking the witness. I am merely asking him whether this criticism that we have had so far has been directed to this analysis of Dr. Edwards with respect to proposed rates, or merely as criticism with respect to cost.

Mr. Plunkett: As I say, your Honor, we have not offered this testimony under the theory that Dr. Edwards is proposing these rates, because in our class rates there are so many scales that we could not tell which one he was proposing, whether first class, or class E; but it is true that in many other proceedings, since Dr. Edwards introduced this Exhibit No. 3 at the hearing at St. Louis, Missouri, in July [fol. 4495] of 1941, many of the shippers have used these tables, and argued to the Commission that they represent a scale of maximum rates; and that is one of the reasons why we are attempting to bring this out at this time.

Chairman Aitchison: We have not gotten out any report on that scale as yet.

Mr. Plunkett: No.

By Chairman Aitchison:

Q. Just as a matter of interest, Dr. Day: The movement from Springfield, Oregon, is a movement from a branch line point over the main line, and then from the main line onto a branch line, is it not?

A. Yes.

Q. And unless my mental sliderule has slipped, the rate is 6.23 mills per ton mile. Now, the Southern Pacific Company is reluctant to let log trucks go out on the main line, is it not?

A. We are reluctant to do that, yes, sir, and we take precautions about the loading of the cars when we do go out.

Q. Especially from either Woodburn on the one hand or Springfield on the other hand.

A. Yes.

Q. Now, Idanha and Silverton is branch line, is it not?

A. Yes.

Q. And rather light-weight branch line, at that?

A. Yes, sir.

[fol. 4496] Q. And there the rate is 10 mills per ton mile, is that right?

A. I will take your word for it.

Q. Well, 3.45 per hundredweight multiplied by 20, divided by 68, comes close enough.

A. Yes.

Q. So that there is no consistency in the log rates, then, is there?

A. As measured by cost?

Q. No. I mean, in the one case you have a service which can be performed, if you want, by using log trucks, and in the other case it is virtually ruled out by reason of the fact that it is your main line that the shipment goes over, for a little distance, at least; and yet in the one case, where the conditions are more favorable for the transportation of low-grade commodities such as logs, or peculiar commodities, such as logs, the rate is higher by 33⅓ per cent—or rather, by 50 per cent.

A. Well, of course, Mr. Chairman, I do not make the rates. I know that the rates are made in consideration of getting a linehaul on the finished product. That is the first purpose of the low log rates, and the Traffic Department tries to encourage movement to the inland mills, so that we will not lose it.

Q. These are not inland.

[fol. 4497] A. How?

Q. These are not inland points.

A. No, that is true, they are not. I do not know why the rates are made as they are.

Q. But you are using this criterion to test whether or not Dr. Edwards' theory is working out?

A. No, Mr. Chairman, that is not the point. The point here is that Dr. Edwards shows, or has developed, deficiencies in the passenger and less than carload traffic, and he says that the carload traffic should bear that because this other traffic cannot be made to earn its expenses. Now then, I say, by the same token, there are other items of carload traffic that cannot make their expenses, and they should be passed on up to the higher-rated traffic.

Q. I note from the top of sheet 16, that the average revenue for all of the log traffic on the system was 7.4 mills, or less; is that correct?

A. Yes, sir.

Q. Your ton miles seem to be a little stiff, do they not?

A. Well, log traffic does not vary so very much with mileage, Mr. Chairman.

Q. You say that the average haul for all of this traffic is 60 miles, or not less than 60 miles, with an average earning of 2.24 cents per hundred, as compared with 3.45, better than one cent more, or approximately 40 per cent more rate, [fol. 4498] for the same distance. There is something particularly generous about that rate.

A. Generous?

Q. Yes.

A. Why, no, Mr. Chairman, there was no generosity, or anything of that sort, in any logging rate.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: On the record. Continue.

By Mr. Plunkett:

Q. Proceed with your testimony, please.

A. The rate on lettuce, minimum 20,000 pounds, from California to New York is $1.84 per hundredweight. The cost according to Table 83 of Exhibit No. 3 for a haul of 3,200 miles is $2.60 per hundredweight. The deficiency in meeting Cost Level II amounts to 76 cents per hundredweight. Other examples of deficiencies are indicated on Sheet 3 of Exhibit 192, entitled "Shipments of Transcontinental traffic, comparing through rate and costs as computed on Exhibit Nos. 3 and 13 . . . .".

This exhibit shows typical shipments of transcontinental traffic which moved in great volume. It shows the through rates and the costs indicated on Exhibits Nos. 3 and 13. Without exception, all of the transcontinental perishable rates are insufficient to cover the costs included at Cost Level V-a and fail by substantial amounts. Loss and Damage is [fol. 4499] additional to all the above computed deficiencies. These are merely a few examples of deficiencies.

Q. If it is proper to assume that the deficiencies in earnings from less than carload and passenger traffic should be made up by the carload traffic, what do you believe should be done with the deficiencies in the earnings from commodi-

ties moving in carloads at rates which are lower than the average, such as the ones just referred to?

A. To be consistent, it should be recognized that commodities moving at depressed rates also create deficiencies which should be provided for in the formula.

Mr. McCollester: May I observe that Dr. Edwards' answer to the question which I asked him on cross examination, agreed with that. I quoted to him his own statement, to the effect that if some services paid less than the full distributed proportion of the charge, others must pay more,—which was the statement that he made in his prepared statement in reference to passenger deficiencies and less than nearload deficits. I asked him if that would not apply to differences in freight, where some other freight was loaded in the train, and I understood him to say that it would.

The Witness: He said that it would, yes, but in his tables he has not made use of that. The tables do not show that he has done that.

Mr. Plunkett: May I ask a question——

[fol. 4500] Com. Alldredge: Pardon me, but that would vary a little, would it not?

The Witness: Yes.

By Mr. Plunkett:

Q. Professor Day, I understood you to say, at the very beginning of the discussion of this subject, that the scales were made upon the assumption that each kind of traffic bore its full share of the distributed cost. Is that right?

A. Yes, sir.

Q. So that if one kind of traffic does not bear its full share, some of the others must be raised to make up for the deficit; is that correct?

A. Yes, sir. On class rate traffic he had to make up the deficiencies on the other traffic, moving at depressed rates.

Q. So that if you were to use cost only, as a criterion to make rates, you would have to increase the cost of other traffic to make up for the deficit on certain traffic, would you not?

A. Yes, sir, that is correct. In other words, if he is going to start with a deficit, he should carry it through to a finality.

Q. Are the deficiencies of low-rated traffic a matter of

consequence in the determination of the revenue needs from high rated traffic?

[fol. 4501] A. They are.

Q. In your opinion, are deficiencies an appropriate element for consideration in a cost finding formula?

A. No; it is not my suggestion that a treatment of deficiencies has a proper place in a cost finding formula. In the first place, deficiencies are involved with revenues and therefore go outside the field of cost. In the second place, one begins to invade the field of rate making when he undertakes to say one commodity should and another should not share in the common overhead charges or to say one class of traffic should overcome the losses of another, or to say the needs from one class of traffic are greater for the reason that another class fails to yield the average needs from that source. It is merely suggested that one cannot say what the revenue needs from class-rated traffic in a territory are without giving appropriate consideration to the deficiencies of low rated commodities.

Com. Splawn: I see now, Doctor, that if I had just kept quiet, and let you continue, it would not have been necessary to ask you my questions.

By Mr. Plunkett:

Q. What would you say about the practicability of giving proper consideration to the deficiencies of other traffic on class-rated traffic?

A. It would be so hopelessly involved with volume of movement, revenues from individual groups of traffic and [fol. 4502] out-of-pocket costs as to be impossible of determination.

Q. If the deficiencies of low-rated traffic are to be charged against high-rated traffic, would the revenue needs from the high-rated traffic depend in a large measure upon the volume moving in each of the other classes?

A. They would.

Q. Will you explain by a simple example why this is so?

A. The effect is illustrated in the fourth page of Exhibit No. 192, entitled "Example illustrating effect of consist of lower grade commodities upon cost comparisons of high-grade commodities when consideration is given to deficiencies of the former."

For simplicity and illustrative purposes, carload traffic has been divided into three groups arranged in relation to their respective earning powers in an ascending scale. They are: (1) Agricultural products and livestock, (2) Minerals and Forest products, and (3) Manufactures and Miscellaneous.

It is recognized that there are both high and low-grade commodities in each of these groups which would further complicate the determination but which are disregarded for the purpose of this illustration. In this example, it is assumed for illustrative purposes, everything is the same in the two territories except the proportions carried in the first two groups of traffic.

[fol. 4503] The same total gross revenue, the same revenues from Manufactures and Miscellaneous, the same fixed overhead charges and the same unit out-of-pocket cost of transporting the various classes are assumed. Territory "A" is assumed to earn less gross revenue from Agricultural and Animal products and correspondingly more from Minerals and Forest products as compared with Territory "B". It is noted that revenues needed from Manufactures in Territory "B" are $400,000 or 20 per cent more than in Territory 'A", because of the named change in consist.

Q. If the cost index of manufactures were compared in the two territories in this manner, what would it be in this example?

A. The index in Territories "A" and "B" would be as 100 to 120. This difference in revenue needs was developed by these steps, notwithstanding the same out-of-pocket costs per unit were assumed in both territories.

Q. Would the revenue needs from the high-rated traffic depend upon the relative volume moving in any one of the other groups of traffic?

A. They would. Naturally; if the deficiencies of one group are to be passed on as an expense to another, the latter's needs will depend upon how much is earned from other sources and that in turn will depend upon the volume moving in the other classes.

[fol. 4504] Q. Will you explain that by example?

A. This effect is illustrated on page 5 of Exhibit 192, entitled, "Example illustrating effect of the difference in the volume of the movement of one class of traffic upon the cost comparison of high grade traffic when consideration is given to deficiencies of another class of traffic". In this

example, everything is assumed to be the same in the two territories except as it is affected by the volume of mineral and forest products carried. 33 per cent more gross revenue is assumed to be earned from this class of traffic in Territory "B", as compared with Territory "A". The fixed overhead and the out-of-pocket expense per unit in each class is assumed to be the same. As a result of the assumed increased movement of minerals and forest products, the out-of-pocket cost of this group is increased proportionately. It is to be noted that because of the assumption that one-third more of mineral and forest products is carried in Territory "B", the rates on manufactures and miscellaneous in Territory "A" should be 40 per cent higher.

Q. If the deficiencies of low-grade traffic are to be charged to high-grade traffic, how would the cost of the latter be influenced by the prevailing rate level in the lower traffic groups?

A. The calculations would indicate a difference depending upon the level of rates on the other traffic carried.

[fol. 4505] Q. Will you demonstrate the principle by example?

A. This effect is illustrated on page 6 of Exhibit 192, entitled, "Example illustrating effect of the rate level of one class of traffic upon the cost comparison of high-grade commodities when consideration is given to deficiencies of low-grade commodities." In this example everything is assumed to be the same in the two territories except as it is affected by the rate level on agricultural and animal products. The volume of traffic is assumed to be the same in all groups and the earnings the same in the other two groups. Also, the cost of operation is assumed to be the same in all respects. It is to be noted that the revenue needs from manufactures in Territory "A" are found to be greater for the reason that it is assumed to operate under a lower rate level on one of the other groups of commodities.

Q. In this particular illustration, how much is the cost of hauling Manufactures and Miscellaneous affected by the rate level on Agricultural and Animal products?

A. In this example the revenue need is $1,000,000, or 50 per cent more for hauling the same volume of Manufactures and Miscellaneous in Territory "A" for the simple reason that the carriers in the other territory earn 25 per cent

more for hauling the same quantity of Agricultural and Forest products.

Q. If the revenue needs from class-rated traffic took into [fol. 4506] consideration the deficiencies of other traffic, what would be the effect of a different practice with respect to making commodity rates on the comparative needs from class-rated traffic, if any?

A. If a carrier makes exceptions with sound practical judgment and wisely reduces rates on a certain commodity, it should add more revenues than direct cost, and it therefore should augment the earnings from that source. This being so, the excepted commodities would reduce the needs from the class-rated commodities. On the other hand, it would have the opposite result if the exceptions were ill-advised. In either case, the revenue needs from class-rated traffic will be influenced by and depend upon the practice in this respect.

Q. Would the comparative cost of hauling the same commodities in the two territories reflect any differences in judgment exercised in making commodity rates?

A. Yes, it naturally follows that the comparative costs would reflect a difference due to the judgment exercised.

Q. You have spoken of the effect of the composition of one class of traffic on the needs from another class when all are on the same level. What would be the effect of the composition of the traffic within the class rates themselves upon the cost determination?

A. The revenue needs per unit from the class-rated [fol. 4507] traffic will depend upon the volume of the movement in each of the subdivisions. This is illustrated on page 7 of Exhibit 192, entitled, "Examples illustrating effect of the composition of class rates upon the general level to produce a given result.

Q. And the principle is the same as your have given with respect to the high-grade as against the low-grade; is that right?

A. Yes, sir.

Q. Continue.

A. In this example, two computations are made involving the same total movement. It is assumed that the total number of units of traffic are distributed differently in Columns (c) and (f) between the different sub-classes. It is further assumed that all of the rates in Column (e) are 25 per cent higher than the corresponding rates in Column (b).

The computations illustrate a situation where the effect of a different composition of traffic overcomes the effect of a difference of 25 per cent in the rate level. It proves that if the revenue needs were the same from class-rated traffic as a whole, the rate level would still have to be different depending upon how much traffic moved in each subdivision.

Q. If the cost analyst is to carry through the treatment of deficiencies to its logical conclusion, is it necessary to [fol. 4508] make many assumptions as to the adequacy of all existing rates?

A. Yes. Before any one rate can be ascertained, some assumptions must be made with respect to the level of all other rates. It must be assumed that either no profit from all other shipments or some definite amount of profit is to be expected. Some arbitrary assumption must be made with respect to what is adequate before any result is obtainable. Dr. Edwards assumed for the purpose of computing the cost of carload traffic that the passenger and less than carload services are not required to pay more than the out-of-pocket cost.

Q. Have you anything more which you would care to add, relating to the deficiencies of other traffic, and its bearing upon the relative cost of hauling class-rated traffic in the various territories.

A. In the foregoing, some of the matters that are essential in a comprehensive study of revenue needs from different sources are suggested. They indicate in a general way, how the needs are inextricably tied to the revenues received from other sources, to the correct ascertainment of the out-of-pocket cost of hauling voluminous shipments, to the composition of the traffic not involved in the class rates, to the composition of the class-rate traffic itself, and to the practice in the various territories with respect to making [fol. 4509] commodity rates in order to induce a greater flow of traffic.

This information is essential and vital to a true determination of the revenue needs from class-rated traffic. Dr. Edwards recognizes that it is economically incorrect in computing the revenue needs for carload traffic as a whole to ignore the fact that the less than carload and passenger services fail to earn enough to cover the full amount of common expenses chargeable to those services. But, in his

calculations of the revenue needs from carloads moving at class rates, he does not give any consideration to the fact that many carloads moving at the depressed rate fail to earn their average revenue needs. This study is said to be for use in fixing class rate scales.

By failing in these particulars, Dr. Edwards' tables do not indicate the average revenue needed in the respective territories involved in these proceedings, from class rate traffic. Consequently, he has not found the relative revenue needs in each of the territories or the relative transportation costs of hauling class-rated traffic in the different territories.

Q. Are you familiar with the analysis employed in Exhibit 12 by which Dr. Edwards supported his estimate of the out-of-pocket cost of handling traffic in the various group territories?

[fol. 4510] A. I am.

Q. Will you state briefly how this cost level was obtained?

A. Dr. Edwards divided each group of operating expenses, rents and taxes shown on Table 87 of Exhibit 3 between the constant and the variable portion by employing definite percentages. Group I expenses were divided 15.92 per cent constant, 84.08 per cent variable; Group II, 22.01 per cent and 77.99 per cent; Group III 28.29 per cent and 71.71 per cent, respectively, etc. These percentages were applied to the respective group of expenses in each territorial group of railroads. The variable portion of each group of expenses in each territory so found was increased to include return on investment in locomotives and cars and the out-of-pocket portion of return on investment in roadway. The aggregate of each was divided between respective units of performance, producing the out-of-pocket unit cost data which he applied to the units involved in shipments in the respective group territories.

Each group of expenses was divided in the same proportion between variable and constant expenses.

Q. How were these percentages which have been used by Dr. Edwards, determined?

A. By judgment, presumably supported by the results of the analytical method as described in Exhibit 12, Appendix G, page 13, Note *I*. Accordingly, the percentage is [fol. 4511] determined by finding how the variable and constant expenses would divide on a hypothetical railroad which operated the average number of miles of road and

performed the arithmetical average number of units of operation. The variable and constant expenses for this hypothetical railroad were determined by use of a unit cost per mile of road operated, representing the constant cost and a cost per unit of service representing variable costs. The ratio of the total monies thus produced was adopted for dividing the total expenses between constant and variable expenses. A single percentage determination was made for each group of expenses for application to all group territories throughout the United States.

Q. How were the percentages supported, which were used to divide the expenses between variable and non-variable expenses?

A. By the method of least squares.

Q. What is the method of least squares?

A. The method of least squares is a process employed for finding the most probable value of observed quantities. The true or exact value of a quantity, the determination of which involves measurement, cannot be ascertained; the values of such quantities are adopted as the best approximation or most probable value. The simplest case is where several observations of equal precision are made upon a [fol. 4512] single quantity and where he most probable value of that quantity is the arithmetic mean of the observed values.

Errors of observation are accidental or systematic. Accidental errors are those which in the long run are as often negative as positive and they affect the mean result but little. Systematic errors are errors due to the same cause, such as, for example, measurements between two points with an inaccurately graduated tape. Systematic errors from the same cause will affect the mean in the same sense and do not tend to balance each other in the mean. For this reason, the method of least squares does not iron out the systematic errors.

Q. Do you think that Dr. Edwards has made an appropriate use of the least square method in his Exhibit 12 analysis?

A. I do not. The application is made to the operating results of railroads scattered over the entire United States. These operating results reflect the influences of many matters which are different for all railroads, such as that due to the class of traffic carried, grade and curve conditions,

miles of branch line operated, amounts of through and way trains operated, rates of pay of train and enginemen, and due to other influences.

The application of the least square method to the problem of separating variable and non-variable expenses is justified when there are no other important influences upon [fol. 4513] the expenses except density. Approximate results are obtainable when the other influences are moderate or when they are as likely to be plus or minus.

In view of the great differences in the cost of operation found by Dr. Edwards, both with respect to individual railroads and the group territories, it is persuasive evidence that these other influences on cost will not cancel out in the calculations which were made.

The influences of density on expenses are buried too deeply by the other great differences to be lifted out from the mass of statistics by the least square analysis. These other influences are in the nature of the systematic errors to which I have previously referred, that cannot be ironed out by the least square method.

This method has application within a limited field. In fact, I have used the least square method to determine the variable railway costs. However, my applications have been made to several measures of the expenses incurred on a given section under different traffic densities, confining the analysis to the narrowest possible limits, both in time interval and extent of trackage.

I have used the monthly statistics for a period of one year covering the conditions operative on a single engine district or a single operating division.

In this manner, I get repeated measurements of sub- [fol. 4514] stantially the same thing and therefore get more reliable results regarding the variability of expenses with changes in traffic than would be obtainable by use of statistics of railroads so different in other respects as those, for example, in the New England and Pocahontas Territories.

I am firmly convinced that mass figures representing statistics of different railroads are fraught with too many disturbing influences to be of value in differentiating between the small differences involved in the variability determination.

Q. Have you prepared an exhibit demonstrating one reason why mass figures may be misleading?

A. Yes. Please refer to page 9 of my Exhibit 192, entitled "Example of per cent of trainmen's wages variable with gross ton miles, year 1940". In this exhibit, I have ascertained the average daily gross ton mile density and the average cost per day of trainmen's wages for each of the months of 1940, on each of two main line divisions of the Southern Pacific Company, and on the consolidated figures. In the first section, I indicate the steps where I find that 888.8 per cent of the trainmen's wages are variable with gross ton miles on the Salt Lake Division through Nevada and Utah.

In the second section, I indicate the calculations which find that 107.8 per cent of trainmen's wages are variable [fol. 4515] with gross ton miles. The natural inference would be that the variable expenses for both divisions would lie somewhere between 88.8 per cent and 107.8 per cent. However, the consolidated monthly figures, in the third section, indicate that 55.5 per cent of trainmen's wages are variable. These great differences indicate the dangers of relying on mass figures. I chose these two divisions, first, because of the great difference in cost of wages per gross ton mile on each and, second, because the periods of peaks and valleys on these districts occurred at different times of the year.

The consolidated figure is tempered by the conditions on both divisions and during September and October the expenses of the consolidated figures are dominated by the lower unit costs of the Salt Lake Division, and during January to March, the consolidated figures are dominated by the higher cost on the Tucson Division. In this exhibit, I demonstrate that the determination is so disturbed by the consolidation of two districts as to void the conclusion with respect to the variability of trainmen's wages as affected by gross ton mile density.

By Chairman Aitchison:

Q. Right there, I am not sure that I follow you. I am not sure that I understand how more than 100 per cent of wages could be said to be variable.

A. Well, Mr. Chairman, the least square method deter- [fol. 4516] mines the slope of the line, which is a chord of the variability, and it may be more than 100 per cent, or it may be less than 100 per cent. In other words, if you have a

curve representing the rate of increase, and it curves upward, by the least square method you can confine the variation within a narrow range. We show the tangent of the long chord that way.

Q. What kind of a curve did you plot?

A. What kind of a curve?

Q. Yes.

A. It is a straight-line curve, but it only has a value within the range of those quantities with which you are dealing. It has no value at all down to zero, for example.

Q. Well, I do not see how it would be more than 100 per cent,—107 per cent.

A. Well, it just is.

By Mr. Plunkett:

Q. If the line cuts the base line, it would be more than 100 per cent, would it not?

A. Yes, sir, that is correct; if it cuts the base line below the origin, then it is more than 100 per cent.

Chairman Aitchison: Proceed.

By Mr. Plunkett:

Q. Does the method of least squares develop the variable percentages which Dr. Edwards used to determine his out-of-pocket cost?

A. No. The method of least squares merely develops an [fol. 4517] average cost per mile of road operated and an average out-of-pocket cost per unit of traffic for all railroads in the United States, such as the averages shown in Exhibit 12, Appendix G, page 13, Note *I*, where he finds a constant cost of $251.19 per mile of road operated in freight service and a variable cost of $0.01452088 per revenue car mile.

Q. How then were the percentages ascertained which Dr. Edwards used?

A. That is indicated in the same note where he shows what these average cost factors amount to when they are applied to a hypothetical railroad that operates the average number of miles and carries the average number of car miles other than mileage cars. This computation shows that for such a railroad 81.70 per cent of the total expenditures vary with the revenue car miles and the balance is non-variable.

Q. You stated that the percentages arrived at are applied uniformly to all groups of railroads. Is that correct?

A. That is true. For example, by reference to Table 3 of Exhibit 13, it will be seen that the percentages shown on lines 1 and 2, which were derived for the United States as a whole, were applied alike to the operating expenses, rents and taxes compiled for each of the group territories shown therein. In this step, he uses the percentage figure as if it were constant and applies to all railroads regardless of their densities.

[fol. 4518] Q. Is it proper to use the cost factors derived by the least square method to establish percentages and also assume that the percentages are constant and apply equally to the various groups, regardless of the densities of the individual railroads?

A. It is not, because one condition contradicts the other. If one part of the expenses is constant and the other part variable with the density, the percentage that the variable expenses is of the total will vary with the density. The least square analysis presumes certain expenses are variable with the density. Hence, the percentages cannot logically be applied to all railroads regardless of their densities.

Dr. Edwards illustrates by example why the percentage figures cannot be constant with changing densities on Exhibit 12, page 22, Note 2, where he explains that if 50 per cent of the operating expenses are variable and 50 per cent are constant for a given traffic density in one period, the same ratio could no longer hold when the traffic density is increased fourfold. He shows in this illustration that the variable portion becomes 80 per cent under the conditions of the greater volume.

Q. In his computation of the out-of-pocket costs of the railroads in the various group territories, did Dr. Edwards make any allowance in the percentage factor because of the [fol. 4519] differences in traffic densities?

A. No. He applied to each group of expenses the same percentage in all territories to establish his estimate of out-of-pocket costs, see Exhibit 13, Table 3, where he establishes the out-of-pocket unit cost. It will be noted on page 1, line 2, of that table that 84.08 per cent of Group 1 expenses in each of the territories is assumed to be out-of-pocket expenses, 77.99 per cent of Group II expenses, 71.71 per

cent of Group III expenses, and so on for all of the different expense groups. These expenses were applied alike to all territories, regardless of the fact that the densities of the various railroads varied from less than 1,000,000 revenue gross ton miles per mile of road to over 8,000,000.

Q. What effect does the use of a constant percentage have on the determination of the comparative out-of-pocket cost of hauling traffic in the various territories?

A. It has the effect of overstating the relative out-of-pocket costs of the railroads having the lightest densities.

Q. Are you prepared to explain by example that this is so?

A. Yes. The discrepancy is explained by referring to Exhibit 192, page 10, entitled "Example demonstrating the inaccuracy of the formula used in Exhibit 12 to divide expenses percentagewise between constant expenses and expenses variable with units of traffic".

[fol. 4520] In this example, I have assumed, for purpose of illustration, that the constant cost is $200 per mile operated and the variable cost is one cent per car mile carried for each of the railroads represented. The expenses shown in Column (2) are computed based on these assumptions and the quantities shown in Columns (1) and (2). I have determined the mean miles of road operated and the mean density for all four railroads on line 10. In Note 2, I have computed the per cent variable for the mean of all railroads, according to the formula, and find 54.3 per cent of the expenses are variable.

I then compute on line 4 the variable cost per car mile in Territory I, also following Dr. Edwards' formula, and find the variable cost in that territory to be 1.36 cents per car mile. Similarly, I find on line 8 a variable cost of 0.84 cents per car mile in Territory II. Applied to this example, I show that the steps in Dr. Edwards' formula lead to a conclusion that the variable expense per car mile in Territory I, having the lightest density, is 62 per cent greater than the comparable cost in Territory II, notwithstanding the variable expense is the same per car mile in both territories by assumption.

Q. In Exhibit 12, page 5, Dr. Edwards shows the relationship of the out-of-pocket cost among territories is generally unchanged from that based on a full distribution of operat-
[fol. 4521] ing expenses, rents and taxes. How does this close agreement come about?

A. The close agreement follows from the use of uniform percentages. Since he has taken the same percentage of the total expenses in each group to be representative of the out-of-pocket expenses, it naturally follows that the relationship is not altered by this step. Equal percentages of different quantities have the same relation to one another as the whole quantities.

Now I would like, if it is in order for me to do so, to add something at this point.

Q. Yes.

A. In this same connection I refer to Appendix G in Exhibit 13, where Dr. Edwards shows, by example, how the variable expenses are separated from the non-variable expenses. On page 12 of that exhibit, Note I, he finds the variable cost in Group I expenses to be 1.452-plus cents per car mile for all of the named railroads in the combined New England and Eastern Territories; and the constant cost to be $251.19 per mile of road operated. An attempt was made to eliminate railroads that had peculiarities, that might disturb the result. As I recall it now, railroads less than 50 miles long were cast out, and railroads having an average load of over 40 tons, were likewise cast out. In other words, the purpose was to remove those disturbing influences that [fol. 4522] I have referred to. Now the results of the least square method are then applied to the number of railroads, and the sum of the densities of each railroad, to produce a percentage division of expense in the Eastern District, namely, 81.70 per cent variable and 18.30 per cent non-variable.

Now, the nine railroads used in this analysis are associated with New England Territory, and all other railroads are associated with Eastern Territory. When he divides the expense in each territory between variable and non-variable by the fixed percentage, and then reduces the variable portion to an out-of-pocket cost per car mile, he finds the cost amounts to 1.266 cents per car mile in New England Territory, and 1.370 per car mile in Eastern Territory.

Although I started on the premise—or rather, Dr. Edwards started on the premise that the variable is 1.452 cents per car mile for all of the railroads, he winds up with the conclusion that the variable cost is about 13 per cent less for the railroads associated with New England Territory, and 6 per cent less for the railroads associated with East-

ern Territory. The extraordinary fact is that, contrary to what my last page indicates, that is, that applying the constant percentage to the low density line would overstate the cost, other conditions have resulted in costs in the New England Territory, which has a low density, being lower [fol. 4523] than in the territory that has a high density.

Q. Does that conclude your statement, Professor?

A. Yes, sir.

Mr. Plunkett: At this time, if the Commission please, we offer Exhibit 192 in evidence.

Chairman Aitchison: Without objection, it is received.

(Exhibit 192, Witness Day, received in evidence.)

Chairman Aitchison: Is that all?

Mr. Plunkett: That is all on direct.

By Chairman Aitchison:

Q. Have you attempted to recast the exhibit at all—or have you attempted to come to any conclusion with respect to what the relative figures would be on your basis, Doctor?

A. No, Mr. Chairman, I have not, and I do not think that it can be done from the system statistics.

Q. Or from the data which you have available before you, including the work sheets.

A. No; I could not.

Q. You are familiar, are you, with the litigation involving cost investigations before the courts and commissions that has been conducted during the last few years?

A. Perhaps not too familiar.

Q. Well, you know, for instance, of the Oklahoma formula, do you not?

[fol. 4524] A. I have heard of it.

Q. Have you ever studied it at all?

A. Not intensively, no, sir.

Q. Has it been extensively used?

A. I do not believe that it is being extensively used nowadays, no, sir.

Q. In any event, did it attempt to divide the fixed expenses on some basis?

A. Well, the problem there, as I recall it, was to find the cost of hauling the various shipments.

Q. No, but there was a cost, as between freight and passenger.

A. Yes.

Q. There was a division as between freight and passenger first. Then did they or did they not carry it further, if you remember?

A. What?

Q. Did they or did they not carry the cost further?

A. Beyond the out-of-pocket cost?

Q. Yes.

A. Oh, yes.

Q. Or rather—no; I mean, beyond the division between freight and passenger.

A. Well, I do not know; I really do not know enough about it, to answer the question definitely.

Q. Have you ever participated in any of the rail abandon-
[fol. 4525] ment cases?

A. No.

Q. Do you happen to know whether or not, in those cases, cost-of-service analyses were presented by the rail carriers which undertook to apportion the fixed costs?

A. Well, in a problem of that kind, or a situation of that kind, there would have to be some attempt at apportioning those costs.

Q. As a matter of general knowledge, could you tell me what is considered, or what you consider, as the pioneer study in this matter of cost apportionment as between classes of service?

A. (No answer.)

Q. Perhaps I can help you. How about Mr. Tallant?

A. I am not familiar with what he has done, in that connection.

Q. How about the study of the Wisconsin Commission in 1905, in the case of Buell against the St. Paul? Are you familiar with that analysis?

A. No.

Q. Made by Commissioners Meyer, Erickson and Barnes?

A. No, sir.

Q. Well, would it surprise you any to know that in all of those pioneer studies, at least, the fixed costs were divided?

A. No, sir, I would not be surprised if that was a fact,
[fol. 4526] however, I do not know what the particular problem was, that was involved there, as to whether it was a problem of finding the cost of handling particular shipments, or the problem of finding the cost of freight and passenger, with a separation.

Q. With respect to the rail carriers, it is a problem of finding the cost and value of the service on both, for particular cars, according to the space used, and the like,—is it not?

A. Yes.

Q. That is a somewhat similar problem to yours, is it not?

A. Yes, sir, that is a somewhat similar problem. They try to arrive at an apportionment of all expenses. I have made estimates in these minimum rate cases, where I have developed the out-of-pocket cost, and then I have shown what it would amount to if the overhead common expenses were apportioned in a certain manner, without subscribing to it, however, as being proper.

Q. And that also has been presented as justification in cases where Fourth Section Relief was sought by the rail lines, has it not?

A. Yes, sir.

Mr. J. R. Bell: If your Honor please, might I ask the witness one question?

Chairman Aitchison: Yes.

[fol. 4527] By Mr. J. R. Bell:

Q. Professor Day, your study of this matter, and your conclusions and presentations, are not in any manner dependent upon any question with respect to the accuracy or correctness of the railroads' returns to the questionnaire in this case, are they?

A. That is right.

Mr. Plunkett: I have nothing further.

Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. Smelker:

Q. Dr. Day, I have just a few questions, and I might state that the questions which have been directed to you from the Bench have reduced the amount of my cross examination very substantially. Briefly stated, as I have understood it, you have stated that cost comparisons ought to be limited to out-of-pocket cost. Now in a divisions case, would you limit your cost comparisons to out-of-pocket cost if the interested carriers in one territory had reduced their direct operating expenses over those in the other

territories by heavier capital investment, double tracking, grade reduction, and so forth?

Mr. J. R. Bell: Just a moment. Will you read that question, please, Mr. Reporter.

(Question read.)

Mr. J. R. Bell: If the Commission please, I would like to suggest that we have a divisions case pending, and I do [fol. 4528] not see that it is a pertinent inquiry as to what the position of this witness will be in that case,—the Transcontinental Divisions Case.

Chairman Aitchison: It is merely a hypothetical question, I assume,—is it not, Mr. Smelker?

Mr. Smelker: To save time, if the Commission please, I am perfectly willing to strike the word "divisions" from the question.

Chairman Aitchison: How?

Mr. Smelker: I say, it is agreeable to me to strike the word "divisions" from the question.

Chairman Aitchison: All right. On that basis, then, you may answer the question.

A. Well, the question is still not quite clear to me. I realize that one railroad cost may be lower than another railroad cost, because of the investment, but I do not believe that distributing the total investment by any formula will correct that, or overcome that,—or reflect that difference.

Chairman Aitchison: I do not think, Doctor, that there is any desire on the part of us up here on this side of the Bench, to lay stress upon a formula just merely because it is a formula. We want to find out if we can, we want to know, if we can, what is the right and fair way to do this thing. Now, in a case such as Mr. Smelker has indicated, [fol. 4529] can you give us any light on what you think would be the equitable way to do that, from the standpoint of yourself, that is, as a statistician?

A. Well, Mr. Chairman, I honestly cannot see how a cost study can be useful in fixing maximum rates, whether they are class rates or any other kind of rates. The higher cost level, V-b, with 5¾ percent return, is a level so much below your class rates, even your fifth class rate, that I do

not see how it could be useful in fixing class rates, or determining that the class rates in one territory should be reduced to the level of the class rates in another territory.

[fol. 4530] Chairman Aitchison: Well, you and I are not on common ground with respect to the question and answer, but I will not press it. Proceed, Mr. Smelker.

By Mr. Smelker:

Q. How can you reflect the differences in investment, if one is greater than the other; that is, if one spends a lot of money in making improvements, while the other one does not?

A. I do not know.

Q. Now, are not most of your criticisms which were made in the first part of your prepared statement, directed to Dr. Edwards' Exhibit No. 3, met by his Exhibit No. 13?

A. Oh, my, no. When he has two estimates, he has not abandoned the Exhibit No. 3 estimate, and they only show alternative ways of allocating fixed expenses, and when he finds that by one exhibit the cost is around $4 and by the other one $3, I do not think my criticisms are limited as you say.

Q. Will you refer to page 13 of your statement and the last sentence of the first full complete answer which reads: "To be more specific, if one is required to compare the cost of hauling five tons 300 miles in box cars in the New England Territory with that in the Pocahontas Territory, he should not have to speculate whether the cost is 57.3 or 87.9 cents in the New England Territory and speculate whether the cost is 36.3 cents or 52.5 cents in the Pocahontas Territory."

[fol. 4531] In view of Dr. Edwards' testimony at Indianapolis, that Exhibit No. 3 represented a more proper basis of distributing constant costs as well as your criticism of the treatment of constant costs in Exhibit 3, does it not follow that there are no ground for speculation?

A. "More proper" is an indefinite term. It is still speculative, until you can say specifically it is one or the other.

Q. Will you refer to page 14 on which you state that manufactured products require services that are different from the general run of traffic.

A. Yes.

Q. Will you enumerate these added services.

A. It is commonly moved short distances and may be moved finally in a way train instead of a through train. It may be handled in smaller units requiring more locomotive per car to handle the traffic. It loads lighter and requires more cars.

Q. Would cleaning box cars come in this category?

A. What?

Q. Would cleaning box cars come into this category?

A. I was not thinking of such small items as that.

Q. Was not the least squares method used by Dr. Edwards applied separately by territories?

A. He applied it to three different territories in the United [fol. 4532] States but the first district covered the New England territory and the Eastern territory.

Q. Did not the results from this study constitute only part of the various approaches made in determining out-of-pocket costs?

A. Yes. That was only used to confirm his judgment figures, I should say, in the different items of expense.

Q. Does this computation of the out-of-pocket costs which you describe on page 23 of your prepared statement indicate that the aggregating of operating divisions would always understate the out-of-pocket costs found for the divisions when treated separately?

A. No. It might work either way. It is a pure accident, whichever way it works. The point is, he is being misled by mass figures. He does not know where he is at after he has made the computation.

Mr. Smelker: That is all.

By Mr. Plunkett:

Q. As I understand your position in answer to questions from the Bench, it is that where the problem before the Commission is the fixing of maximum reasonable rates, it is your opinion that full distributed costs should not be used whether the rates are to be made in one territory or more than one territory?

A. That is correct.

Q. Is that right?

A. That is right.

[fol. 4533] Q. Where the problem is to make rates on a given commodity or class of commodities?

A. That is right.

Q. Is that right?
A. Yes.

Mr. Plunkett: That is all.
Chairman Aitchison: Are there any other questions of Dr. Day? (No response.) You are excused, sir.

(Witness excused.)

Mr. Plunkett: Mr. Chairman, we have one more witness and about three-quarters of an hour to run. I would suggest that we continue with him as far as we can to occupy the remainder of the time.
Chairman Aitchison: Yes.
Mr. Plunkett: Mr. McDonald.
Chairman Aitchison: Raise your right hand and be sworn.

J. P. McDonald was sworn and testified as follows:

Direct examination.

By Mr. Plunkett:

Q. Will you state your name, resident and occupation for the record, please, Mr. McDonald?
A. J. P. McDonald, General Statistician of the Atchison, Topeka & Santa Fe Railroad, with headquarters in Chicago, Illinois.
[fol. 4534] Q. As statistician for the Santa Fe Railroad, you have participated in many rate cases, have you?
A. Yes, I have.
Q. And have prepared exhibits and statistics regarding matters before the Commission at that time?
A. Yes.

Mr. Plunkett: I am going to suggest, Mr. Chairman, that Mr. McDonald give a brief outline of the matters that he has covered in his prepared statement, and that the statement be copied in after he has completed his description.
Chairman Aitchison: We can mark it as an exhibit.
Mr. Plunkett: Very well.

By Mr. Plunkett:

Q. Mr. McDonald, you have a prepared statement and an exhibit dealing with Dr. Edwards' cost study, Exhibits 2 and 3?
A. I have.

Q. Copies have been distributed to various parties?

A. I understand they have.

Q. Will you give a brief outline of the matters that you have covered in this statement?

A. I cite the character of information that was supplied in response to the basic questionnaires. That data was used in developing the costs in Dr. Edwards' Exhibits 2 and 3. I point out the qualifications under which the responses to those questionnaires were made in so far as the [fol. 4535] Atchison, Topeka & Santa Fe Railroad Company was concerned, and then I deal with the question of the separation of expenses as between classes of service——

Q. You mean, both freight and passenger services?

A. Both freight and passenger services—and bring out why the passenger deficiency cannot be treated in the aggregate, primarily because of the individual treatment that was given to the primary accounts in the initial separation of expenses as between services.

Q. Do you also deal with the effect on cost of the relative amount of main line and branch line service that is provided by a given railroad or group of railroads?

A. Yes. I have developed some basic data from our records to reflect the influence upon cost of factors such as the variation in density, the variation in the proportions of way and through train service, and the variations in the proportion of helper service on the various operating divisions, or selected operating divisions of the Santa Fe System. That detail is shown in the exhibit.

Mr. Plunkett: We will ask that this exhibit be marked as Exhibit No. 193, if the Chairman please.

Chairman Aitchison: It may be so marked.

(Exhibit 193, Witness McDonald, marked for identification.)

By Mr. Plunkett:

Q. Go ahead, Mr. McDonald.

[fol. 4536] A. I have reviewed the worksheets that were employed in building up or segregating the Santa Fe costs as to the four territories between which the Santa Fe costs were separated and I have pointed out the deficiencies in the use of averages in the breaking up of those expense service elements such as mileage of cars, rented on a mileage

basis, and in the distribution of less than carload traffic as between the four territorial groups into which the Santa Fe System was divided; and then I deal with the deficiencies in the use of the car days in segregating expenses as to running service on the basis of train hours and point out wherein the train hours that are used for the Santa Fe System in making that computation do not reflect the complete service units.

Q. You also deal with non-revenue expenses?

A. Yes. I treat with the segregation of the non-revenue expenses as between the four territories and refer to the manner in which the gross ton miles were built up for non-revenue service by being distributed between the types of cars and bring out that there is a basic difference in the average haul of non-revenue service because the majority of it is incurred in connection with the transportation of fuel, and that in the determination of the percentage of non-revenue service applicable to freight service, there is relatively more service performed in transporting the fuel [fol. 4537] for freight service per dollar of expense than there is for passenger service, by reducing it to the number of pounds of fuel transported for the respective services as taken from our records.

Q. Do you also deal with the station expense as applied to less than carload traffic?

A. Yes. I have treated with the station expense for less than carload traffic and have pointed out the basis that was used in estimating the original separation for account 373 in response to the questionnaire, because the information was not available as to the actual separation; and then I produced results for our Chicago Terminal Division and Kansas City Division for which we did have a separation of the expenses for station service, showing how the per cent of those station expenses to the total compares with the percentage that was used in making the general separation as between territories in Dr. Edwards' cost determination.

Q. Are those the general subjects that you have covered in your statement?

A. Yes. I think that outlines in a general way the character of elements that I give attention to in my testimony and in Exhibit No. 193.

Mr. Plunkett: Mr. Chairman, if it is agreeable I would like to have this statement copied into the record.

Chairman Aitchison: Would you like to have it copied [fol. 4538] in?

Mr. Plunkett: Yes.

Chairman Aitchison: Very well. It may be copied in.

(The prepared statement is as follows:)

By Mr. Plunkett:

Q. Are you familiar with the cost study entitled "Railroad Freight Service Costs in the Various Rate Territories" submitted in evidence by Dr. Ford K. Edwards as Exhibits 2 and 3 in this case?

A. Yes.

Q. Have you any comments to make with respect to the source from which the basic information was obtained?

A. Much of the basic information used in determining these costs was procured from the various carriers through the medium of two questionnaires referred to in Exhibit 2; one calling for information under seven different items, and the other for certain system mileage statistics as well as operating expenses for maintenance of way and structures, and transportation accounts, together with locomotive repairs. For the Santa Fe the questionnaire called for subdivision of the expenses and statistics into four territorial groups. The consist of these territorial groups was prescribed in the questionnaire by combinations of specified operating divisions.

In our response to the questionnaire of November 19, 1940, attention was directed to the fact that the separa- [fol. 4539] tion of station employees as between (a) platform labor and (b) other, was not available, and this was estimated on basis indicated in footnote, as suggested in the questionnaire if actual was not known. It was further pointed out that data was not available from which to make the estimated percentage distribution of nonrevenue freight net ton miles by classes of equipment called for in item 3.

In our response to the questionnaire of November 23, 1940, it was explained that the data was compiled in so far as available from existing records within the time allotted. Attention was also directed to the limitations of this data and that certain restrictions would apply to its use, particularly with respect to the separation of operating expenses called for in Schedules (A), (B), and (C), for the reason that for our line operating expenses are assigned to

operating divisions primarily for managerial purposes and for local supervision of expenses, and the basis employed in effecting such distribution was designed primarily to meet such needs. Separation of car miles of cars rented on a mileage basis, line 9 schedule (A), was not available from our records by operating divisions from which the prescribed territorial separation was to be made and this was reported only in total for the system.

There was also a one page statement received with the November 23rd questionnaire calling for system statistics [fol. 4540] for carload and less carload traffic for 1939, separated between the four territories indicated. This separation was not available from our records and the data was reported by states or groups of states corresponding as nearly as practicable to the territories comprising the operating division groups specified in the questionnaire.

In the absence of the estimated percentage distribution of nonrevenue net ton miles by classes of equipment, and in response to a further request from Dr. Lorenz the number of cars of company freight loaded and received from connections, year 1939, was furnished. Much of the information called for in these questionnaires was based upon estimates and this was particularly true in case of roads required to separate operating expenses and statistics between several rate territories.

Q. Did the expenses used in this cost study reflect substantially the freight proportion of expenses as currently reported to the Commission?

A. The expenses reported for the entire railroad was the freight proportion of expenses as reported in Schedule 320 of Annual Report Form A to the Interstate Commerce Commission, and that source was specified in column 3 of Schedules (B) and (C) of the questionnaire.

Q. Have you any comments to make with respect to that separation, and as to the m[illegible] in which the expenses are [fol. 4541] separated betwe[illegible]vices?

A. The Commission's rules covering the separation of expenses between services are not absolutely specific for each account as to how the common expenses should be distributed, and leave some latitude to the carriers in making this separation to avoid undue expense. For certain accounts they require expenses be directly assigned to either freight or passenger service as far as practicable and that common expenses be apportioned on basis of the directly

assigned expenses. For other items they require carriers to make apportionments based on tests or experience. For other items they prescribe alternate bases or methods of apportionment.

Q. Do all carriers follow the same basis of distribution?

A. No, for the reason that the same character of basic detail is not maintained by all carriers. To illustrate: locomotive repairs are apportioned to services by some carriers in total on basis of locomotive mileage, other carriers initially apportion locomotive repairs by class groups and then distribute each class group to services on basis of locomotive mileage. Similar variations exist in the distribution of fuel expenses, locomotive depreciation, and variation in practices exists in other accounts, which affects the distribution. For Account 394, Train Fuel, the rules provide for direct assignment so far as practicable, [fol. 4542] and common expenses apportioned on basis of direct assignment.

Some roads make the assignment separately for each locomotive, others make it for classes of locomotives—all locomotives in one class being grouped together—others assign the fuel directly to the service in which the locomotive was being used when the fuel was issued. To the extent that these differences exist the separation between services is not entirely uniform and costs based on the freight proportion of expenses so determined will be incorrect unless these variations are rectified.

Q. Does the inclusion of an adjustment to cover the so-called "passenger deficit" compensate fully for such deficiencies as may exist in the primary separation of expenses between services?

A. Adding percentagewise to the freight service cost, the difference between the passenger revenues and the expenses assigned to passenger service, as was done in Exhibit 2, does not in my opinion compensate for the defects in the basic distribution of expenses between services. This for the reason that the expenses are generally treated with by individual accounts and the common expenses are apportioned for each account or in combinations with expenses of a similar nature, and treating with the so-called passenger deficit in the aggregate percentagewise does not [fol. 4543] therefore give effect to the individual account treatment in the initial separation.

In Dr. Edwards' Exhibit No. 13 the passenger deficit is apportioned on the basis of the revenue tons and revenue ton miles. This latter treatment also disregards the effect of the individual account treatment in the initial assignment of expenses to services.

Q. Does the variation in proportion of main and branch line operation, through and way train operation, heavy and light traffic density, have a direct bearing upon the costs of operation of a railroad?

A. These elements of service and operating conditions have a very decided influence upon the cost of service.

Q. Have these elements been given proper consideration in Exhibit 2?

A. In Exhibit 2 it is stated that: "The scales of costs shown for each territory are based upon the average operating conditions in each territory. The costs, therefore, represent a weighted average of all conditions, i.e., main line and branch line operation, through train and way train operation, operation on lines of heavy traffic density and lines of light traffic density, and the operation of large terminals and small terminals."

These conditions enter into the computation of the composite average of all railroads in a given territory, to the [fol. 4544] extent of the influence of volume of expenses and such service units as are used in computing unit costs and the peaks and valleys are leveled off in the over-all average.

Q. Does not the composite average when applied to a given haul, say of 300 miles, produce a result which gives effect to all of those varying conditions?

A. No, for the reason that in applying the over-all territorial average to a specific movement of 300 miles employing three functional operations, carloads, car miles, and gross ton miles, it is assumed that the same proportion of main line and branch line, through and way train service, large and small terminals, and heavy and light density lines exist as in the territory as a whole. In making comparisons of ultimate costs in one territory with another it is assumed the proportions of these various operating conditions are equal in each territory to the proportions existing in the whole of the respective territories.

Q. Can you give some specific reference to the variation existing in these operating conditions on the Santa Fe Railway with which you are connected?

A. The Santa Fe divides almost equally between main and branch lines and the gross ton mile density on the main line is almost twelve times that of the branch lines. Practically all of the branch line service is performed by way trains, whereas for the most part main line service is per-
[fol. 4545] formed by through trains. The length of the main line trains measured in cars is about three times that of the branch line trains.

Q. Can you illustrate the direct effect of these variables upon costs on your own line?

A. I have taken information from records of the Santa Fe for selected operating divisions to illustrate the wide variations in cost that result from influences of traffic density, variation in proportion of main and branch line, the proportion of helper service, and in the amount of way and through train service, based on the year 1939, and set this up in Exhibit 193.

It will be observed on this exhibit the Southern Kansas Division with largest proportion of way trains and less than 50 per cent branch lines, but with a relatively light gross ton mile density, 931,000, has the highest operating expense cost per thousand gross ton miles, while the Plains Division, with 61.3 per cent branch lines, a density of 3,798,000, more than four times as large, and with 30 per cent way train service has a much lower cost, $1.31. On the other hand, the Slaton Division, with 73.5 per cent branch lines, and a density of 1,125,000, and 52 per cent way train service, has a cost of $2.07.

The effect of grades is illustrated by the Arizona Division. With 24.8 per cent branch lines, 6,671,000 den-
[fol. 4546] sity, only 15 per cent way trains, but 31.1 per cent ratio of helper locomotive miles to principal locomotive miles, the total operating expense cost was $1.92. Similar results appear on the adjacent Albuquerque Division, with 21.3 per cent helper.

The Los Angeles Division, on which the Los Angeles terminal is located, shows the influence of heavy terminal expense among other conditions. With 34.5 per cent branch lines, 2,846,000 density, 9.7 per cent helper, and 39 per cent way train service, the cost was $3.98 per thousand

gross ton miles. This division has the highest transportation expense cost per thousand gross ton miles, $2.17; Southern Kansas, with a larger per cent way trains, is next with $1.79.

The Pecos Division approaches nearest to the System average in respect to the proportion of branch lines, helper service, and way train service, being 56.4 per cent, 8.9 per cent, and 24 per cent compared with the system 50.8 per cent, 7.3 per cent, and 31 per cent respectively; but with a density of slightly more than 50 per cent greater than the System, its cost per thousand gross ton miles, both for transportation expense and in total, are substantially lower.

Q. Have you had an opportunity of examining the Bureau's underlying work sheets in the development of data relating to the Santa Fe?

[fol. 4547] A. Copies were procured and I have received them.

Q. Were any errors or deficiencies observed in making this review; if so, please comment on them?

A. I should like to refer to Schedule A, sheet 1, of the work sheets covering the Santa Fe. Line 9, Car miles of cars rented on mileage basis, were reported by the Santa Fe in the questionnaire in total only for the System. This mileage was arbitrarily apportioned between territories in relation to total car miles including cabooses, Line 8. Such mileage in each territory does not bear a direct relation to all System car mileage. The amount assigned to Territory III, including Oklahoma, Slaton, and Plains Divisions and G. C. & S. F. Railway was 37,391,979. (15.366 per cent of the total car miles, 243,345,652). The G. C. & S. F. Railway and P. & S. F. Railway comprise the greater part of Territory III and the actual mileage of cars on a mileage basis for these two lines was 25,996,069, equivalent to 13.65 per cent of the total car mileage on these lines instead of 15.366 per cent used by the Bureau. This represents an overstatement of 12.60 per cent for the G. C. & S. F. Railway and P. & S. F. Railway portion only, and other territories are therefore correspondingly understated.

Q. Do you have any comments to make on any of the other underlying work sheets applicable to the Santa Fe?

A. Yes. Schedule A, Sheet 3 of 3 sheets. The separation [fol. 4548] of system freight train car expenses between running, switching and loading and unloading was made

on the basis of constructed car miles for cars in switching service, using an arbitrary mileage for each movement, and the car days for running service. The time portion for running, switching, loading and unloading was constructed on the basis of the car days, using arbitrary factors in the case of each.

The constructed system car days in running service were computed on the basis of the train hours plus the train switch hours multiplied by the average number of cars per train and reduced to days by dividing by 24. The train hours, as defined by the Commission on Form OS-A, represent the elapsed time of road freight trains, ordinary and light, between the time of leaving initial terminal and arrival at final terminal, including intermediate delays.

The time spent at initial and final terminals by through trains, such as our transcontinental trains, which run between Chicago and Pacific Coast, is therefore not included in the reported train hours used in this calculation. Ordinarily considerable time is spent at each train district terminal in servicing or changing engines, inspection of cars, and performing other terminal work in connection with the train.

1939 schedule for our Train 43 provided for approximately 14.65 per cent of the over-all time between Chicago [fol. 4549] and California points to be spent at initial terminals, and that time is not represented in the car days computed by Dr. Edwards under his procedure. Other train schedules vary more or less from this percentage, but to the extent that such train hours have been omitted from Dr. Edwards' calculations the expenses assigned to running service *is* understated and those assigned to switching and loading and unloading time *is* correspondingly overstated.

The total car days for the year were computed from the serviceable cars on line and the deficiency in the computed car days shown for the Santa Fe in Schedule A, Sheet 3, is indicated as follows:

(a) Active Car Days, from Form A, Schedule A, Sheet 3, Column 11, 11,012,821; (b) Serviceable Cars on Line X 365 days, 27,760,440; (c) Understatement, 16,747,619; (d) Per Cent (c) of (b), 60.33.

Q. Have you any comments to make with respect to the Maintenance of Way and Structures expenses?

A. On Schedule B, Sheet 2, covering freight Maintenance of Way and Structures expenses separation between running, switching, station service, general overhead, and special services, Station and Office Building Expenses, Accounts 227-228, were distributed 15 per cent to running service and 85 per cent to station. The expenses in this account include those associated with station buildings, grain [fol. 4550] elevators, ice plants, stock pens, division and general office buildings, etc. Some of these expenses, such as grain elevators, ice plants, and general office buildings, are unrelated to either running or station expenses and should not be included in computing running or station expenses.

Q. Do you have any observations to make with respect to Transportation expenses?

A. Schedule C, Sheet 2, covering separation of Transportation expenses between services, provides for assigning all expenses of Account 402 to running service. On our line this account includes, among other train supplies and expenses, the cost of ice used in refrigerator cars and the revenues and expenses connected therewith.

Q. Have you examined the treatment given the non-revenue traffic feature by Dr. Edwards and if so, please explain the results of your observation

A. In Schedule E, Sheet 2, the gross ton miles of non-revenue traffic were approximated and segregated between freight and passenger service on basis of the freight and passenger proportion of operating expenses. The defects in this basis of separation will be explained after discussing the procedure followed in approximating the gross ton miles.

The total non-revenue net ton miles of the Santa Fe System were distributed between gondola and hopper cars, tank cars, and all other cars, in direct relation to number [fol. 4551] of carloads of company coal, oil and other freight loaded and received from connections which we reported to Dr. Lorenz in response to his special request. It was thus improperly assumed that the average haul for all classes of company material was the same. A test reveals that the haul for coal is approximately one-half the average haul for fuel oil.

The average load per car was then assumed to be the same as for the same type of car of commercial traffic. The loaded car miles were next constructed from the aver-

age hauls, and synthetic gross ton miles were produced by applying the average tare weight for the respective classes of cars furnished by the carrier in response to Item 5 of the November 19th questionnaire. Empty car miles were arbitrarily determined by assuming the empty car movement was in the same ratio as all cars of the respective types. This assumption is erroneous.

It is our practice to load box cars with company material, westbound, that are suitable for return eastbound loads. Empty refrigerator cars moving westbound are utilized in moving company material in order to conserve equipment and to reduce empty car mileage.

The total gross ton miles of company freight was arrived at by combining the net ton miles of nonrevenue freight, estimated loaded and tare gross ton miles, and [fol. 4552] the estimated empty tare gross ton miles. The ratio of the total nonrevenue gross ton miles to the total gross ton miles, excluding caboose, was reduced to a freight proportion, in the ratio of the freight proportion operating expenses to the total operating expenses.

Establishing the freight proportion of nonrevenue service on basis of freight proportion of operating expenses is based on the assumption that the company service performed for the benefit of freight and passenger service bears a direct relation to the expenses assigned to each service.

Q. Is this a proper assumption?

A. It is not. The preponderance of nonrevenue service on our line and other lines generally is incurred in transporting fuel, ties and ballast. About 50 per cent of our nonrevenue service in 1939 was in transporting fuel for locomotive use. Freight service equires considerably more fuel transportation service per $1.00 of operating expense than does passenger service.

Q. Have you made some computations which show the actual difference?

A. Yes, In 1939 there was transported on the Santa Fe System 46 pounds of company fuel for freight service per $1.00 of operating expenses, and 38 pounds per $1.00 of operating expenses for passenger service. Relatively there was performed 21 per cent more transportation service in [fol. 4553] connection with locomotive fuel for the benefit of freight service than for passenger service. If proper

adjustment of nonrevenue traffic is to be made between services, this disparity in service requirements should be given recognition. These features are cited in order to reveal, at least in part, the extent to which arbitraries have been employed in developing costs.

Q. In your examination have you considered the treatment accorded less carload deficiencies?

A. I gave particular attention to this computation for the Santa Fe as shown on Schedule E, Sheet 3.

Q. Will you please explain what your examination revealed.

A. The computation of less carload deficiencies has been made by a statistical process, employing many arbitraries. Net ton miles were built up by using the average haul 811 miles as developed from the Forwarder report, which was based on one week October 1 to 7, 1939, for our road, and the average net ton miles per loaded car mile, 7.14 tons, from that report. It was also assumed that the average load and average haul for the system was also applicable to each of the four territories featured for the Santa Fe.

The assumption was not proper. In the case of Territory 1, which comprised the portion of our line in Illinois, the total miles of road operated aggregated only 290 miles, while the average haul used in that territory was 811 miles. [fol. 4554] Q. Were station costs properly determined and distributed to territories?

A. In computing station costs, the platform portion was based on the estimated figures, which we supplied for the system in response to the suggestion in the questionnaire, and this figure was allocated to territories on an arbitrary basis in Schedule C, sheet 1, by assuming the same ratio existed in each territory between platform labor and the total freight expense Account 373 as for the system as a whole, namely, 17.203 per cent.

This assumption is faulty. In the case of Chicago Terminal Division, included in Territory I, for which separation is available, the platform labor represented 35.66 per cent of Account 373 in 1939, for that division; and similarly for the Kansas City Terminal Division the actual platform labor represented 39.93 per cent of the total expense of Account 373 for that division in 1939.

Synthetic gross ton miles are then built up for less carload traffic, after calculating the loaded car miles by using the average net ton miles per car from the Forwarder report

for one week test period and constructing loaded and empty tare ton miles; assuming that the ratio of empty to loaded car miles for all box car traffic on our system, namely 32 per cent, was applicable to less carload traffic.

This assumption is also faulty for the reason that volume [fol. 4555] of less carload traffic on our line is predominantly west and southbound, whereas it is in the reverse direction for carload traffic, affording a surplus of box and refrigerator cars for loading of merchandise west and south.

During 1939 the Santa Fe loaded 19,993 cars of less carload traffic at Chicago and forwarded 37,732 empty refrigerator cars and 15,773 empty box cars westbound, and at Kansas City loaded 45,464 cars of less carload traffic, and forwarded west and south 41,015 empty refrigerator cars and 20,717 empty box cars.

All traffic for Arizona and California points as far as possible is loaded in returning westbound refrigerator cars. Class A box cars conditioned for flour and mill products and cement are placed for loading merchandise traffic going to territories originating grain and grain products and cement. Because of this practice a large portion of less carload traffic involves no empty return movement.

Because of these circumstances, the cost of handling less carload traffic as determined for our line is overstated materially.

Mr. Plunkett: We offer in evidence Exhibit 193, Mr. Chairman.

Chariman Aitchison: Is there any objection to the receipt in evidence of Exhibit 193? (No response.) It is received.

[fol. 4556] (Exhibit 193, Witness McDonald, received in evidence.)

Chairman Aitchison: I would like to ask you a question.

By Chairman Aitchison:

Q. When you furnished this information in response to the questionnaire of November 19, 1940, and attached the reservations that you have spoken of, were you doing the best you could in the circumstances to give the Commission the information you knew they wanted?

A. We gave them the best information that was available within the limited time that they prescribed for making response to the questionnaire.

Q. Well, in the time since then, have you developed any corrections that you would like to have made in the return that you made?

A. I did not pursue the response to the questionnaire any further, because in order to develop more accurate information, it would involve a considerable amount of research, and we did not know for what purpose that data was to be used.

Q. How long was it before you found out?

A. Well, we found out what the purpose was after we submitted the response. I did make an inquiry in connection with one of the questionnaires as to the purpose of it, but it was not quite clear after getting the response as to just what specific use was to be made of it. It was a rather [fol. 4557] general reply and I was not sure what use would be made of it.

Q. You have known for at least a year and a half what was being done with the questionnaire, have you not?

A. Oh, yes. We know that, and of course as soon as we got the copies from the Commission of the work sheets, we knew the manner in which it had been applied.

Q. Now, knowing as you have for at least a year and a half the purpose of the questionnaire and the significance which must be attached to the answers made, have you made any effort to furnish the Commission with better information that you gave in the questionnaire, or are you doing so now?

A. No. We have not undertaken any further research to go into all of those various features that were covered by the questionnaire.

Q. You spoke of certain errors and deficiencies which you discovered in making a review of the work sheets, particularly Schedule A, sheet 1, line 9. Your statement was as follows: "Line 9, car miles of cars rented on mileage basis, were reported by the Santa Fe in the questionnaire in total only for the system." Then a little further on in your testimony you make the statement that the G. C. & S. F. Railway and the P. & S. F. Railway had an actual mileage of cars on a mileage basis aggregating, for the two lines, 25,996,069. Why did you not report that in the question- [fol. 4558] naire?

A. Well, the territorial sub-divisions all were specified in the questionnaire; the questionnaire stipulated the specific operating divisions that were to be included in these

territories. In the case of territory 3, those two railroads, the G. C. & S. F. and P. & S. F., do not constitute the entire territory that was called for in that questionnaire, in group 3, or territory 3. We really had no separation at all that covered the territory that was specified.

Q. You could, however, have given—as you have now done—the actual mileage of those cars for the two lines that you have mentioned and which you say comprise the greater part of territory 3, could you not?

A. (No answer.)

Q. The answer is what, please? I said, you could have given it, could you not?

A. Those mileages were available and we could have supplied them for those two railroads.

Q. All right. Now, give any explanation you want.

Mr. Plunkett: Go ahead, Mr. McDonald.

Chairman Aitchison: You may make any explanation you want.

The Witness: It did not cover the entire territory of those two lines.

By Chairman Aitchison:

Q. It was information which was in your possession and [fol. 4559] not in the possession of the Commission, was it not?

A. Well, we could have developed the information from our records. We do not regularly report this information to anyone.

Q. Are these two lines of railroad respondents in these proceedings, do you know?

A. (No answer.)

Chairman Aitchison: The record will speak for itself. I thought maybe you knew.

The Witness: I think they are as part of the Atchison, Topeka & Santa Fe Railway System.

By Chairman Aitchison:

Q. Are they not specifically named, separately?

A. I could not say as to that.

Q. Have you made any cost studies yourself to put in before the Commission or before courts?

A. Yes. I have made cost studies for cases before the Commission.

Q. Where you attempted a general distribution of the costs?

A. That is where we were measuring the cost of certain commodities.

Q. Now, how did you do that, by analysis and breakdown on the one hand, or by a synthetic method of building up on the other?

[fol. 4560] A. We developed those costs on the basis of treating with the service units that were associated with the particular traffic under study. We developed the unit costs for the service units, the special types of service units such as train miles, locomotive ton miles, locomotive miles, gross ton miles, car miles and net ton miles. After determining the unit costs for these particular service units, we ascertained the volume of those individual service units that were associated with or incurred in connection with the movement of the commodity under review and applied to those respective units that respective unit cost.

Q. That is a synthetic method rather than an analytical method, is it not?

A. Well, I think it is more or less of a procedure, because the costs do not separate; they cannot be separated in the initial instance, and we have to proceed in some fashion to get them when we are developing the cost for a particular commodity. They are out-of-pocket costs.

Q. Those were relatively small cost computations, were they, or did they involve great quantities and computations?

A. They involved specific movements. I have in mind the movement of petroleum traffic from California and Arizona points under Docket 27565 and then in connection with other local movements of commodities, individual commodities not moving in substantial volume.

[fol. 4561] Q. Petroleum is the largest one you have in mind?

A. Yes. Petroleum, I think, in point of volume of movement, is the largest.

Q. In these cost studies that you have made, what was your treatment of the constant costs as compared with the variable?

A. Well, of course we first separated the expenses as between the variable expenses and then we used a rather arbi-

trary method for superimposing the overhead or the fixed expenses on those out-of-pocket costs. Those were minimum rate cases, and the treatment that we applied was a percentage application of the fixed expenses.

Q. How would you ascertain or come to a conclusion with respect to the percentage which should be used?

A. Well, that was based on the percentage relationship of the aggregate out-of-pocket expenses to the total expenses.

Q. Do you have any cost studies that you care to submit in this proceeding?

A. No. I do not have any complete and comprehensive cost studies.

Chairman Aitchison: That is all I have. Have you any examination, Mr. Smelker?

Mr. Smelker: I had one question, Mr. Chairman, but you asked it.

Mr. J. R. Bell: Professor Day can now explain——

[fol. 4562] Chairman Aitchison: Just a minute until we finish with this witness.

Mr. Plunkett: I have one more question.

By Mr. Plunkett:

Q. Chairman Aitchison asked you about what efforts you had made to produce correct separations by territories since you learned the use Dr. Edwards was going to make of that separation, which was about a year and a half ago. Have you been short handed since that time because of the draft, with your forces?

A. We have been decidedly so, on personnel. In order to undertake any such analysis as, in my opinion, would be necessary to get more dependable separations, would involve a tremendous amount of research on our whole Santa Fe operations.

Q. Suppose you were trying to ascertain the amount of the payments made to private car lines for the use of their equipment that would be attributable to each of the four territories through which the Santa Fe runs; what would your have to do to get it exactly?

A. We would have to start from the wheel reports for each train district and identify the private line cars and the mileage of their movement on each of those districts,

and then assemble them for the division as a whole in order to fit the aggregate into the combinations of divisions that were specified in this grouping arrangement by territories [fol. 4563] as set up in the questionnaire.

Q. Would that have been an expensive proposition?

A. It would have involved a tremendous amount of work to review all of our wheel reports for each train district. It would involve every train that we operated, every freight train, for a period of a year.

Q. Part of the information that was requested in the questionnaire was a breakdown of your traffic units over these four territories. By "traffic units" I have in mind gross ton miles, net ton miles, loaded and empty car miles; is that right?

A. That is right.

Q. Would an actual breakdown of those traffic units be an expensive job?

A. Now, with respect to those traffic units, that is gross ton miles and locomotive miles, we do have such separation, and that was included in our response to the questionnaire.

Q. You keep that currently, do you?

A. Yes.

Q. Do you know whether that is generally done by all lines?

A. Well, no. It is not generally done.

Q. But you do it?

A. This separation by operating divisions of service units such as we make, is made by few roads; I think we are one of the few roads that make such a separation.

[fol. 4564] Q. Were there any other items of expense that you would have to go to the basic data for, like time slips or material tickets, if you were going to make an actual separation of expenses?

A. Yes, there would be, because in our initial separation that we make for supervisory needs, we localize the expenses; that is, we consider them as being incurred on the territory or district on which the particular facilities, such as shops or roundhouses or stations, are located.

Q. Is that because the purpose of your local statistics is to check the efficiency of the local superintendent?

A. That is right.

Q. On whose division they are situated.

A. He is responsible for those expenses, and they are separated for his territory so that they can be policed and

he can be held accountable for variations in those expenses.

Q. But such a separation might or might not be useful in a cost study which had for its purpose the breakdown of expenses over the various rate territories, is that right?

A. No, I do not think it would be, unless the cost study would encompass all of the various service units and be sufficiently sensitive to take care of the initial infirmity in the separation; either that, or make the separation starting from scratch and revamping it to fit cost purposes.

Mr. Plunkett: That is all I have.

[fol. 4565] Chairman Aitchison: I would like to have you answer one more question for me.

By Chairman Aitchison:

Q. In these cost studies that you made where you apportioned the constant costs in the ratio of your actual out-of-pocket cost, did you not automatically apportion the passenger deficit?

A. No. I did not treat with the passenger deficit at all in any of my cost studies, because I have not felt it had a proper place in a cost determination.

Q. What I am getting at is this: You spoke of total costs; did you mean total costs assigned to freight?

A. Yes. I should have explained that, Mr. Chairman.

Chairman Aitchison: Is there anything further?

Mr. Bee: I would like to ask one question.

By Mr. Bee:

Q. Mr. McDonald, where is the Illinois Division and the Missouri Division? Where are they located?

A. The Illinois Division is located in Illinois and extends from Corwith, Illinois, to Shopton. The Missouri Division extends from there on to Argentine.

Q. The Plains Division, please?

A. The Plains Division extends from Waynoka, Oklahoma, to Clovis, New Mexico.

Mr. Bee: That is all, thank you.

Chairman Aitchison: Are there any further questions?

Mr. Dyer: Mr. McDonald, I have described the Eastern [fol. 4566] and Middle Divisions on page 6, Section C of my Exhibit No. 141.

By Mr. Dyer:

Q. Will you please describe the Southern Kansas Division?

A. The Southern Kansas Division extends from Chanute, Kansas, on the north to Tulsa, Oklahoma, on the south and to Winfield, Kansas, on the west.

Q. Does it include Joplin?

A. Pittsburg and Joplin.

Q. Could you state the mileage, the total mileage of that division?

Mr. Hughes: Mr. Chairman, I am unable to see the pertinency of this line of examination to the testimony relating to cost studies.

Chairman Aitchison: The witness has given us an exhibit which shows various operating divisions, including the Southern Kansas Division. I think Mr. Dyer is entitled to know how many miles are in that division.

The Witness: The mileage of the Southern Kansas Division in 1939, the year used in this study, was 560 miles of road.

Mr. Dyer: Thank you.

Chairman Aitchison: I want to ask you one more question.

By Chairman Aitchison:

Q. You spoke also of a discrepancy that you found with [fol. 4567] respect to the Chicago Terminal and Kansas City Terminal with respect to platform service. Is that right?

A. Yes. That is right.

Q. You give now the proper figures for the platform service in those two territories, or those two sections?

A. These are rather fragmentary, Mr. Chairman. The Chicago Terminal, of course, was included in Territory 1, but that was the only part of the Territory 1 for which we did have the separation, and the same was true of the Kansas City Division. That was included in Territory 2, but it was just part of Territory 2. That was all we had the separation for, was those two terminals.

Chairman Aitchison: Are there any other questions of Mr. McDonald? (No response.) If not, you are excused.

(Witness excused.)

Chairman Aitchison: Is there any further testimony to be presented at this hearing?

Mr. Plunkett: We would like to recall Mr. Day, Mr. Chairman.

Chairman Aitchison: Very well.

CLARENCE E. DAY recalled:

Direct examination.

By Mr. Plunkett:

Q. The Chairman asked you about some information re- [fol. 4568] specting the rates on peaches, I believe, and pears which you were to get this afternoon.

A. Yes.

Q. Have you that information?

A. And lettuce.

Q. And lettuce.

Mr. J. R. Bell: And also oranges.

By Mr. Plunkett:

Q. Will you explain that?

A. I have verified the costs that are shown on page 3 for cost level V-a. The costs that are referred to in the text on page 6 should be 10 per cent higher, approximately, on account of measuring a level of V-b.

Q. That is shown on one of the sheets of Dr. Edwards' exhibit in a footnote, is it not?

A. Yes. To the table of costs he adds 50 per cent to get cost level V-a and 65 per cent to get cost level V-b, or 10 per cent higher. I find, however, that in the text where I show $4 as being the cost, that should be $4.40.

Chairman Aitchison: Worse yet.

The Witness: I beg your pardon?

Chairman Aitchison: Worse yet.

The Witness: I read the value out of the 11 tons——

Mr. J. R. Bell: Are all the rest of the figures correct?

The Witness: Yes. I read the value out of the 11 tons [fol. 4569] instead — out of the 10 tons.

By Chairman Aitchison:

Q. In order to get the figures you have in your text, you took the Column K figures and added 10 per cent to them, is that right?

A. No, To get V-b, you add 65 per cent; to get V-a, you add 50 per cent.

Mr. Plunkett: The Chairman asked you what you should add to Column K.

Chairman Aitchison: Yes.

Mr. Plunkett: I think your answer would be, 10 per cent.

The Witness: To get the V-b level, you add 10 per cent to the Column K values.

Chairman Aitchison: Yes.

The Witness: But I have been talking about the Column H values because we were talking about minimum loads instead of the average load or actual load.

By Mr. J. R. Bell:

Q. The V-a level is shown on page 3 of your Exhibit 192, is it not?

A. Yes.

Q. Your V-b level is set out on page 6 of your statement?

A. Yes.

Chairman Aitchison: That, of course, will not appear in the transcript.

Mr. J. R. Bell: I beg your pardon?

Chairman Aitchison: It will not appear in the transcript, [fol. 4570] identifying it as page 6.

Mr. J. R. Bell: It has been referred to as page 6 heretofore, in connection with this.

Chairman Aitchison: The reporter then may change the $4 figure to $4.40, in the original text.

By Chairman Aitchison:

Q. Similar changes should be made in the percentages which result from those computations?

A. That is right.

Q. Is that correct?

A. Yes.

Chairman Aitchison: Are there any other questions of Dr. Day? (No response.) You are excused, sir.

(Witness excused.)

Mr. Hughes: Mr. Chairman, this concludes the presentation of the railroads, the Class 1 railroads of the Western District at this time. I would like to make this reservation with respect to the Washington hearing: There have appeared at this hearing some witnesses from Iowa and other Western Trunk Line States who have put in certain testimony relating to the Western Trunk Line rate situation which the carriers heard for the first time here. It may be that further analysis and study of their material may lead us to the view we should offer some brief rebuttal of it at the Washington hearing. On the other hand, we may not see that there is any necessity for it. I should like to reserve [fol. 4571] the right for a short period at that hearing for that purpose.

Chairman Aitchison: If there is nothing further, the present hearing will be adjourned to be reconvened upon the call of the Commission. I regret that we are not able to assign the precise date at the present moment. The parties will be advised.

(At 4:30 o'clock P. M. November 27, 1942, hearing adjourned to a time and place to be fixed by the Interstate Commerce Commission.)

[fol. 4572] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28300

Class Rate Investigation, 1939

Docket No. 28310

Consolidated Freight Classification

Main Hearing Room,
Interstate Commerce Commission Bldg.,
Washington, D. C.

March 29, 1943.

Met, pursuant to notice, at 10:00 o'clock a. m.

Before Division 2 of the Commission. Hon. Clyde B. Aitchison (Presiding.) Hon. J. Haden Alldredge (Chairman of the Commission.) Hon. Walter M. Splawn, and a Cooperating Committee of the National Association of Railway and Utilities Commissioners, represented by:

Mr. W. H. Scott, of The Public Service Commission of South Carolina.

Mr. George McConnaughey, Public Utilities Commission of Ohio.

Mr. C. L. Doherty, South Dakota Public Utilities Commission.

Present Paul O. Carter, Examiner. W. J. Koebel, Exami-
[fols. 4573-4574] ner. T. L. Haden, Examiner, W. U. Hardie, Director, Bureau of Traffic. J. J. Murphy, Consultant.

Appearances:

(As heretofore noted.)

Additional Appearances:

Frank W. Gwathmey, 1110 Shoreham Building, Washington, D. C., appearing for Southern Railroads.

T. P. Healy, 466 Lexington Avenue, New York City, appearing for Official Carriers.

Henry J. Hart, 12 Graham Building, Bangor, Maine, appearing for Bangor and Aroostook Railroad Company, Canadian Pacific Railway (Lines in Northern Maine), Aroostook Valley Railroad Company.

B. R. Gillespie, Public Service Building, Jefferson City, Missouri, appearing for Missouri Public Service Commission.

Orson L. Huntsman, Federal Office Building No. 1, Washington, D. C., appearing for Office of Price Administration and Director of Economic Stabilization.

T. T. Turnbull, Tallahassee, Florida, General Counsel, appearing for Railroad Commission of Florida.

[fol. 4575] Proceedings

Commr. Aitchison: We will resume hearing in Dockets 28300 and 28310, according to notice.

The record should show we have sitting with us this morning Commissioner C. L. Doherty of the South Dakota Public Utilities Commission in the place of Commissioner Murphy, who formerly sat as a member of the Committee, but that the Division is glad to say the Commission will have the benefit of the advice of Mr. Murphy in further proceedings in this case.

Mr. Smelker, do you have anything further to offer?

Mr. McCollester: Mr. Commissioner, before we start the presentation of testimony I would ask your indulgence for just a moment.

We live in a world where, thank goodness, human relations are still of value, and it seems to me under those circumstances that the record in this proceeding should very appropriately note that since we were last together at the Columbus hearing two of our group have died, two that have taken a very prominent part in the proceedings, Nye McGehee and Milton P. Bauman.

I would like to record my own personal sorrow at the death of both of them, of whom I was very fond, and I am sure I speak for all of us in recording those sentiments.

Commr. Aitchison: You have, of course, accurately stated the feeling of those of us on this side of the bench as well [fol. 4576] — counsel with whom these gentlemen have been so long associated in practice.

Mr. Norman: Mr. Chairman, may I make a suggestion that as soon as possible we find out something about the course and extent of these proceedings, and that to that end I think it would be well if the parties would advise Mr. Carter, or someone who may be designated, as to the time that they expect to consume, so that we can have some idea of where we are by noon, say. Some witnesses won't get here, perhaps until time for them to go on the stand. So far as I know up until this time there has been no indication by any parties as to what their position is.

Commr. Aitchison: We thought that went without saying that Mr. Carter and Mr. Koebel would be kept advised by persons expecting to be heard with respect to the amount of time that would be needed, and what their wishes were, and we will try to be frank when we get that information in order to help you on here, and let you get away.

Corrected Exhibit 189, let the record show, was received in evidence on December 9, 1942. The original Exhibit 189 was introduced by Witness O. M. Anderson, who was granted permission to prepare a new exhibit, as shown by the transcript at page 450, and the corrected exhibit was mailed to Mr. Plunkett, we are informed.

Mr. Plunkett: Mr. Chairman, Mr. Williams and I have a [fol. 4577] stipulation to make on the record in connection with that exhibit.

Commr. Aitchison: All right.

Mr. Plunkett: It is stipulated by J. P. Plunkett, representing the North Dakota Lines, and M. E. Williams, representing the State of North Dakota, that the following tariffs may be considered a part of the record for reference by all parties:

The Great Northern C.F.O. No. 3425-D, I. C. C. A-7977; Northern Pacific Tariff 4407-D, I. C. C. 9581.

In consideration of this stipulation Mr. Williams has agreed to waive cross-examination of Mr. Anderson on the corrected exhibit.

Commr. Aitchison: The corrected exhibit will be received.

(Corrected Exhibit 189 (Witness Anderson) received in evidence.)

Commr. Aitchison: Now, Mr. Smelker.

Mr. Smelker: At the Columbus hearing it was stipulated that the traffic study then being prepared by Dr. Aitchison would subsequently be admitted in evidence as an exhibit in this case.

The study has been completed and copies have been distributed in the manner adopted at the Indianapolis hearing, that is, the proper number of copies have been mailed to the key men designated at Indianapolis, and in addition [fol. 4578] copies have been placed on the Commission's press table.

On the cover page the study is entitled, "Territorial Movement of Carload Freight on May 27 and September 23, 1942," and is shown as having been prepared by Beatrice Aitchison, Associate Economist.

The study is self-explanatory, but I would like to state by way of explanation that it contains results of a study made by Dr. Aitchison of carload traffic originated on September 23, 1942, together with corrected figures for the May 27 study which was introduced at the Indianapolis hearing as Exhibit 14. This exhibit, if admitted, will supersede Exhibit 14.

I now offer it as Exhibit No. 194.

Commr. Aitchison: Any objection?

Mr. Bee: Mr. Chairman, may we reserve the right to call Dr. Aitchison for questions on this exhibit during the hearing?

It is a very complete exhibit, but it is one we had to get all of our staff together to kind of discuss, and we only had the staff together yesterday afternoon, and we would

like during the hearing, if possible, to call Dr. Aitchison.

Commr. Aitchison: She will be available on proper notice. No objection.

Mr. Bee: No objection.

Commr. Aitchison: Exhibit 194 is received in evidence.

(Exhibit 194 (Witness Aitchison) received in evidence.)

[fol. 4579] Mr. Norman: I have one or two questions I want to ask Dr. Aitchison, but I am perfectly willing to defer them.

Commr. Aitchison: At this time, or later?

Mr. Norman: I can ask them at this time.

Commr. Aitchison: Take the stand.

DR. BEATRICE AITCHISON previously sworn, recalled and testified:

Cross-examination.

By Mr. Norman:

Q. I just wanted to inquire, Dr. Aitchison, on what basis you separated as between commodities moving on class rates and commodities moving on commodity rates.

A. I took this combination on page 5 of Exhibit 194 in conjunction with the Appendix II list of commodities in the proposed order of September 25, 1940, and adjusted on that basis.

I believe the assumption in that proposed order was that the Appendix II commodities were apt to move on commodity rates rather than on class rates.

Q. But if a commodity moves on a percentage of first class or column rate, did you give that any consideration at all?

A. I didn't look into the rates that the commodities actually moved on in making that list. I just used the Appendix II list.

Q. So that if there be commodities in that appendix that move on class rates, or rates made with relation to the class rates, they nevertheless would be shown here as commodities.

[fol. 4580] A. Yes, they would be shown here as commodities.

Mr. Norman: I believe that is all.

Commr. Aitchison: Any further questions at this time?

Mr. McCollester: May I ask a question?

Cross-examination.

By Mr. McCollester:

Q. Dr. Aitchison, did you make any check or any spot check on the basis of actual billing and actual rates to see how your assumption worked out for any representative movements?

A. We have had a tabulation made. The waybills for September were not in our possession. We had access to them, but we could not take all 137,000.

The Office of Defense Transportation made for us a tabulation showing item by item the territorial movement.

Instead of Group 701 we had, starting with absorbent cotton, and going on through some of the zinc products each item separately with the number of carloads moving from each territory to each other.

Q. Did that show whether the commodities moved at class rates or at commodity rates?

A. That tabulation itself did not, but some of the men in our rate branch, the Bureau of Traffic, took that tabulation and without origination and destination stations specifically considered worked out what they thought were the most probable rates that would be applied on those move-
[fol. 4581] ments, and that has been analyzed somewhat.

As to whether they picked the proper rates or not, I couldn't say.

Q. That is the only attempt at a check of your assumptions as between class and commodity?

A. Yes.

Q. Which has been made?

A. Yes.

Mr. Bee: May I inquire at this time, and it may avoid recalling Dr. Aitchison?

Cross-examination.

By Mr. Bee:

Q. On page 3, at the bottom of the page, in the last sentence, you state, "This table doubtless overstates the importance of class-rate traffic."

Having in mind that on page 5 you show that cottonseed, vegetable meal and cake are commodity rates, then to that

extent I presume that all cottonseed meal, vegetable meal and cake that you found in the study would have been rated under the commodity description.

A. Yes, those were all in this list.

Q. If as a matter of fact all cottonseed moving from the southwest would move on the percentage of the class rate basis, or the column 100 basis, then to that extent at least this table would be understated, would it not, as to the effect of the class rates?

[fol. 4582] A. To that extent, yes, if that situation was the case.

Q. Could you tell me what caused you to feel that you had overstated or overemphasized, as you use it, the effect as to the class rates?

A. Some of the items which were not on this Appendix II list, such as fruit and vegetables, iron and steel, first class, to those of us who worked with it we thought they moved probably on commodity rates rather than on class rates, yet they would be included as class rates in this table on page 3.

Q. Even though they moved at commodity rates?

A. We didn't know whether they moved at commodity rates or not. We felt that they did. On the other hand they were not on this list that was in the proposed order, and this list was what governed.

Q. And your statement on page 3 was your best judgment from your examination of some 70,000 shipments, I should say.

A. More than that. We had over 131,000 in May, and over 137,000 in September.

Q. Oh, I thought you said 37,000.

A. 137,000.

Q. Approximately 300,000 shipments?

A. That is right.

Q. Without actually rating the shipments?

A. Yes.

Mr. Bee: Thank you.

[fol. 4583] Commr. Aitchison: Any further examination?

(No response.)

Commr. Aitchison: You may be excused.

(Witness excused.)

Mr. Smelker: During the hearing in this case various witnesses, including those appearing for the Commission, have made reference to Freight Commodity Statistics Class I Steam Railroads in the United States, Year Ending December 31, 1939, Statement No. 40,100.

For that reason I now ask that that publication be made a part of this record in this case.

Commr. Aitchison: It can be done by reference, can't it? It is one of our regular publications.

Mr. Smelker: I think it can.

Commr. Aitchison: Any objection to its being used by reference without actual production of the document?

Mr. Norman: I was going to make the same motion.

Commr. Aitchison: That will be understood, and anybody can make use of the data in there so far as it is material and relevant to this proceeding.

Mr. Smelker: Dr. Edwards is available now at any time.

Commr. Aitchison: There was a study which he prepared and which was circulated. Is it your desire to introduce that at the present time?

Mr. Smelker: At any time that suits the convenience of [fol. 4584] the Division.

Commr. Aitchison: Let's go off the record a minute.

(Discussion off the record.)

Mr. Smelker: Dr. Edwards, take the stand.

Ford K. Edwards previously sworn, was recalled and testified:

Direct examination.

By Mr. Smelker:

Q. Dr. Edwards, has your exhibit been distributed to the bench?

A. Yes, sir.

Q. Have you been sworn?

A. Yes, sir.

Q. You have prepared, I understand, under your direction and supervision, at least, an exhibit designated on the title page as "Identification A," and entitled, "Unit Costs for

the Eastern Territory Including and Excluding the Pocahontas Territory and the State of Kentucky, Unit Costs for the Southern Territory Including and Excluding the State of Kentucky, and Other Data."

A. Yes, sir.

Mr. Smelker: If the Commissioner please, I would like to have that marked for identification as Exhibit 195.

(Exhibit No. 195 (Witness Edwards) marked for identification.)

By Mr. Smelker:

Q. Have you made the usual distribution to the parties, [fol. 4585] Dr. Edwards?

A. Yes, sir, I have.

Q. When and how was that distribution made?

Commr. Aitchison: Well, there is no question about that, apparently.

By Mr. Smelker:

Q. I understand you have also prepared a statement explaining this study, have you not, Dr. Edwards?

A. Yes, sir.

Q. Is that statement entitled, "Statement of Ford K. Edwards in Reply to the Criticisms of Exhibits Introduced by Him"?

A. Yes, sir.

Q. What comments have you to make concerning it?

A. I have no comments to make concerning the statement.

I have two brief comments or statements I would like to make concerning Exhibit 195.

Q. All right; you may make them.

A. The first refers to Table 3 and arises from a question which was raised as to what figure we used as the ratio of territorial tons originated to total tons originated for the Eastern District.

Q. What page of the exhibit is Table 3 on?

A. Table 3 extends from page 10 to page 16.

On page 16, footnote 2, we explain the method of our count of tons handled by territories, such tons excluding duplications.

[fol. 4586] In obtaining such count we made use of the ratio of interterritorial tons terminated to total tons terminated.

The question has been asked of me as to how we obtained that ratio for the Eastern District inasmuch as the working data were based on Dr. Beatrice Aitchison's study which covered the Official Territory and did not make a separation between Eastern District and Pocahontas region.

My answer is that for that purpose we used the ratio for the Official Territory assuming that the inclusion or exclusion of the Pocahontas region did not affect the results.

As a check upon that, we subsequently made a laborious study separating the waybills for May 27 between the Eastern District and the Pocahontas Region.

This test study covered 26 commodities and 63 per cent of the tons.

For this tonnage we came out within 1 per cent of the figure we used in the table so that we believe our treatment gives us reasonably accurate results.

My second statement refers to Table 14, page 45.

In columns 2 and 7 of this table, we show the ratio of the carload freight revenue to the fully distributed carload costs by commodity classes for the United States as a whole.

In computing these ratios for the United States as a whole we applied to the tons a ton mile of each commodity class the cost scales that we developed for the United States [fol. 4587] as a territory, namely, Territory 12.

Subsequently to the completion of this study we came to the conclusion that a more accurate development of costs by commodity classes for the United States would have been based upon a summation of the costs by commodity classes by territories. Thus we would obtain our costs by adding to them the costs for each commodity class to obtain the United States total.

Commr. Aitchison: When you speak of "we,"—"we came to the conclusion" and so on—whom do you mean?

The Witness: I should make that "I", Mr. Commissioner.

Commr. Aitchison: Speaking editorially and regally.

The Witness: Yes, sir; I am speaking on behalf of the senior members of the cost section, but I presume I should say I.

The reason for this conclusion is that the distribution of the commodity classes is not equal throughout the territories.

In other words, for example, there is a heavy concentration of cotton in the South, and bituminous coal in the Pocahontas territory.

I merely desire to point out that the comparisons for the United States are available in the record from the freight commodity statistics statements showing the revenues and the material in Exhibit 195 showing the costs by territories, [fol. 4588] and also the ratio of revenues to costs by territories in Table 14.

I have made such a recomputation for the United States, and would like to read into the record ten figures giving the results of this treatment of the United States for the major commodity classes.

Referring to page 45, Table 14, column 2, which shows the ratio of carload freight revenues to fully distributed costs, including loss and damage, passenger and L. C. L. deficits, and 4 per cent return for products of agriculture, the figure would change from 91 to 85.

For animals and products the figure would change from 100 to 93.

The products of mines would be 85.

The products of forests, 84.

The total manufacturers and miscellaneous, 121.

Now, turning to column 7, which is a similar ratio but is based upon the actual rate of return realized by the carriers in each territory, the figures for products of agriculture would change from 94 to 89; for animals to 97; for products of mines to 84; for products of forests to 88, and for manufactures and miscellaneous to 125.

To sum up briefly, for major commodity classes, based on these figures, it appears that the rates on the average for products of agriculture, products of mines, and products of [fol. 4589] forests are from 85 to 90 per cent of the fully distributed costs which we developed, including passenger and L. C. L. deficits and return.

For manufactures and miscellaneous the rates on the average for all individual commodity classes are from 25 to 35 per cent above the fully distributed costs, including passenger and L. C. L. deficits and return.

That completes my statement.

Mr. Smelker: If the Commission please, the prepared statement of Dr. Edwards is quite voluminous, containing

119 pages, and rather than have it copied into the record, we suggest it be made an exhibit in this case.

Commr. Aitchison: Is that satisfactory to all concerned?

Mr. McCollester: That is with the corrections?

Mr. Smelker: As submitted to the Commission.

Commr. Aitchison: This will be marked then Exhibit 196, and if you were asked separately about the various matters you have stated in Exhibit 196, your answers would be that they are true and correct according to the best of your information and your opinion. Is that correct?

The Witness: Yes, sir.

Commr. Aitchison: Is there objection to the exhibit?

(No response.)

Commr. Aitchison: I hear none, and it is received.

(Exhibit 196 (Witness Edwards) received in evidence.)

[fol. 4590] Mr. Smelker: Is that true in connection with Exhibit 195 also, if your Honor please?

Commr. Aitchison: Without objection Exhibit 195 is received.

(Exhibit 195 (Witness Edwards) received in evidence.)

Mr. Smelker: The witness is ready for cross-examination.

Cross-examination.

By Mr. Grubbs:

Q. I think it will be a little more orderly if I ask you the questions about Exhibit 196 first, and then I can go back to Exhibit 195, if it seems appropriate.

I will ask you first to turn please to page 1 in your Exhibit 196.

In your explanation of how the Kentucky costs came to be computed you say in the second paragraph that the southern carriers requested that the costs for the East be computed including both Kentucky and the Pocahontas territory, and that the costs for the South be computed excluding Kentucky.

It is true that that request made of you by the L. and N. was only after the request that had been made by the Governor of the State of Kentucky, and was made in connection with that request.

A. Yes, sir.

Q. You explain, Dr. Edwards, that due to the large amount of work that was necessarily involved that it became [fol. 4591] necessary for you to restrict the Kentucky showings to boxcars and to gondola and to hopper traffic and to a limited number of loads.

As I understand it, you had no figures showing actual loads for Kentucky. Is that correct?

A. That is right.

Q. On page 2 of your narrative statement you say that the Kentucky cost showings include the operations of the L. and N. the Illinois Central, the Southern, and the C. N. O. & T. P.

They do not include, do they, the operations in Kentucky of the G. S. and O.?

A. No, sir.

Q. Nor the Tennessee Central?

A. No, sir.

Q. Nor the N. C. and St. L.?

A. No, sir.

Q. Nor the Clinchfield?

A. No, sir.

Q. And they do not include, as I understand it, any of the C. and O. lines in Kentucky?

A. No, sir.

Q. In a strict sense it is the lines in Kentucky in Southern Territory except those I have mentioned to you?

A. That is right, and the reason for that is that those railroads were selected by the representative of the Governor of Kentucky and agreed upon for the purpose of this showing.

[fol. 4592] Q. At the top of page 4 of your narrative statement you have a tabulation headed, "Fully distributed cost," and after that statement you say that this table reveals that costs in the South are something lower than costs in the East.

I take it that you used the term "East" there in the sense of the Eastern District. Is that correct?

A. Yes, sir, Eastern including New England and excluding Pocahontas.

Q. Thereafter you say that that conclusion of yours is also supported by a separate computation which embraces the ten year period 1929 to 1939. Should that be 1930 to 1939 inclusive?

Commr. Aitchison: Off the record.

(Discussion off the record.)

Commr. Aitchison: On the record.

A. Yes, sir, that should be the ten year period 1930 to 1939 as separately indicated in Exhibit 195, page 8.

By Mr. Grubbs:

Q. The method to which you there refer is your restatement of Mr. Kennedy's showing of comparison between Southern Territory with Eastern District?

A. Yes, sir.

Q. I will ask you first, if you had shown the whole of Official Territory in this table, what would the result have been? Have you determined that?

A. No, sir. We didn't make that computation although it is available of record.

[fol. 4593] Q. You say it is available of record?

A. It can be computed.

Q. Would you be willing to compute that figure, and to supply it?

A. Similar to the procedure at the top of page 4?

Q. That is right.

A. Yes, sir.

Commr. Aitchison: How long will that take, Dr. Edwards?

The Witness: It will take about 30 or 40 minutes.

Commr. Aitchison: I take it you don't want it right now, then.

Mr. Grubbs: No, sir, that is all right any time during the hearing.

By Mr. Grubbs:

Q. The reason I asked for that is that on sheet 3 you say this is a table showing the results for principal territories and not subgroups, and I take it that Official Territory is a principal territory, and that Pocahontas is a subgroup in fact.

Dr. Edwards, if you had used the whole of Official Territory, instead of only the Eastern District, for this ten year period, what would the result have been, to show higher or lower costs in the South than in Official Territory?

A. It would show costs higher by roughly 6 per cent, I believe.

Q. It wouldn't be less than 6 per cent, would it?

A. What do you mean? I don't understand the question.

[fol. 4594] Q. You haven't got a figure in your computations that is less than 6 per cent for the South, higher than than the whole of Official Territory, considering fully distributed costs.

A. No, sir. I could answer that question better when I make this computation you desire.

Q. All right, sir.

A. We have some computations, including Pocahontas territory, based on the restatement in Mr. Kennedy's exhibit.

Q. We will get to that. That is a little bit later on in your narrative statement.

A. Yes, sir.

Q. I would ask you to turn to page 20, if you please, sir, just for a moment.

You say there your understanding of the problem that was presented to you was determining territorial average costs for purposes of establishing territorial-wide rates.

A. Might I ask, is that item 2 you are reading?

Q. Yes, sir, that is correct.

A. That has been corrected.

Q. Then I will ask you if the correction that has been made reflects any different conception on your part as to your objective.

A. I made that correction feeling that I might be presuming to state something that should be left for the judgment of the Commission, and have restated my answer to item 2 [fol. 4595] to the technical matters dealing with the use of Rail Cost Form B versus Rail Cost Form A, so I think, you would have to restate a new question to me.

Q. I understand that so far as that particular item is concerned, but the problem in general that has been placed before you here, as I understand your conception of it, is that you are to arrive at territorial-wide costs for use in making territorial-wide rate scales. That is correct, isn't it?

A. Yes, sir.

Commr. Aitchison: You are throwing the whole thing wide open. Dr. Edwards is attempting to get out, because

he was advised by Mr. McCollester that it was considered objectionable.

By Mr. Grubbs:

Q. I would like to ask you how many class rate territories you recognize east of the Mississippi River, this being a class rate proceeding.

A. For the purpose of this proceeding I would generally recognize the two as being accepted, the Southern and Official, with New England given separate treatment on occasion through differentials.

Q. And Florida given similar treatment in the South?

A. Yes, that is true.

Q. Wherever you, yourself, have made a showing for the Commission here you have made it territorial-wide (I am omitting southern showing now, I mean the southern showing you have just referred to), you have made your com- [fol. 4596] parison territorial-wide from the standpoint of the South, but it has not been territorial-wide from the standpoint of Official territory. That is true, isn't it?

A. No, that isn't true, Mr. Grubbs, with possibly the exception of the statement that you have asked me to furnish. I think most of our final comparisons now are based on both Official and the Eastern District separately.

Q. Wherever you have shown Official Territory as a whole, rather than Official Territory in part, it has only been in a restatement of Mr. Kennedy's or somebody else's exhibit; isn't that true?

A. Yes, sir. Originally we did not make that broad grouping.

Q. Does it seem fair or proper to you, when you are setting up costs for use in fixing rates for territories——

Commr. Aitchison: (Interposing) Wait a minute on that. Would your figures be any different, Dr. Edwards, if you were submitting these as an expert testifying before, we will say, the Commissioner of Internal Revenue, or the Tax Court of the United States?

The Witness: No, sir, unless he wanted some different arrangement or grouping.

Commr. Aitchison: As I have understood your testimony, you have attempted, simply as one experienced in the analysis of the railroad costs, to apportion the costs as

they were found between different classes of service. You [fol. 4597] haven't attempted to tell this Commission how much use should be made of your statement, have you?

The Witness: No, sir.

By Mr. Grubbs:

Q. The question I would like to get an answer to is, do you think it is fair or proper to set up cost calculations for rate-making purposes using one area as a basis of your cost calculation and another area for rate application?

Commr. Aitchison: Shouldn't a question of what is fair and what is proper be addressed to this Commission rather than to the witness?

Mr. Grubbs: Perhaps that is right.

Commr. Aitchison: Unless it is a matter of statistical or professional or economics opinion.

By Mr. Grubbs:

Q. In your comparisons where you have eliminated Pocahontas, isn't it true that the Pocahontas lines are large carriers of merchandise traffic?

A. They have a substantial volume. I don't have comparative figures at hand though.

Q. From your study of the statistics, doesn't it reveal to you they are much larger carriers of merchandise traffic than the Southern carriers as a whole?

I mean isn't their density much greater on the manufactures and miscellaneous description, for example, than the density of that description of traffic in the Southern Ter- [fol. 4598] ritory as a whole?

A. No, I haven't obtained a density for manufactured products separately. The record will indicate that.

Commr. Aitchison: Then you can't answer the question.

The Witness: Yes, sir, that is right.

By Mr. Grubbs:

Q. In making the separation or the exclusion of Pocahontas from Official Territory, was it your thought that the Southern Territory was a homogeneous area and Official Territory was a heterogeneous territory and needed and required, therefore, some exclusions?

A. That is probably correct. When we originally started making this study, we had no specific directions as to exactly what we should do.

We knew that the characteristics of the Pocahontas carriers insofar as costs were concerned were substantially different from those of the Eastern District.

We know that from time to time the Commission had felt it necessary to give separate consideration in Official Territory to the needs of the Eastern District carriers, presumably because at the same rate level one might starve and one might greatly prosper. That undoubtedly influenced their decision in separating the Pocahontas from the Eastern District.

After these hearings had been in progress some time, we encountered the criticisms of the Southern carriers, and other parties, for our having set up the data in that form. [fol. 4599] Thereupon we reworked our computations to provide cost scales for the East, including Pocahontas; in other words, on the basis to which you are referring.

As to the weight that the Commission should give to evidence of course is something on which we make no comment.

Q. Isn't it true that originally the Commission specified in this proceeding the territories for you and it specified Official Territory and you departed from that?

A. That may be so.

Q. When you were asked to consider Kentucky separately you found that there was at least in Kentucky a different result to be seen than from the balance of the South. Isn't that true?

A. That is right.

Q. When you do exclude Pocahontas lines the result is to exclude those lines which have the lowest costs even as to boxcar traffic, and have the best revenue results, that is true, isn't it, in Official Territory?

A. Yes, sir.

Q. I ask you to turn back to page 5, if you please.

In the last sentence in the first paragraph you say that if you take Kentucky out of the South and take Pocahontas out of Official Territory, and then compare the results, the result is to show higher costs in the South than in Official Territory.

A. That is right, and I would like to add, we made that comparison by two types of equipment and came out with [fol. 4600] costs for the South, excluding Kentucky, of 1 to 2 per cent higher than the Official excluding Pocahontas.

We subsequently reworked those figures again, based on all classes of equipment, which took quite an additional amount of time, and also came out with results between 1 and 2 per cent.

I think that 1 or 2 per cent is a very slight exaggeration for the reason that our showing of costs for Kentucky being as low as they are, I think overstates in some measure the decrease of Kentucky versus the rest of the South.

But by and large Kentucky costs are substantially lower than the rest of the South, and if you remove Kentucky the costs for the remainder of the South are very, very close to the costs for the Eastern District excluding Pocahontas.

Q. They would be slight higher.

A. I said about. I believe that 1 or 2 per cent overstates the cost for the South slightly, for I think in showing extremely low costs for Kentucky we did not have the time to make a very comprehensive study.

Q. Do you stand on this statement or not?

A. This 1 or 2 per cent?

Q. Yes, sir.

A. Yes, sir, I stand on the statement of 1 or 2 per cent, but I slightly qualify it with the explanation I have given, and the explanation I have given you is what I have stated [fol. 4601] back on page 2.

Q. Did you go a step further, in line with the request which I made of you in behalf of the L. and N., to say what the result would have been if you had excluded Kentucky from the South and added it to Official Territory?

A. Yes, sir.

Q. What was the result of that? It isn't shown here, and that is the reason I asked you.

A. Let me ask you, just what showing do you wish? Do you want it with the East including Pocahontas and New England?

Q. I would really like to have it two ways. I would like to have it the South minus Kentucky compared with Official Territory, and the South minus Kentucky compared with Official Territory including Kentucky.

Mr. Norman: You have got it that first way.

A. I think on page 3 we have such a comparison. We have the East, including New England and Pocahontas, and that is Index 94.

We have the South excluding the State of Kentucky, 101.

Q. But you do not have the overall costs here, or the costs that are comparable with the costs that are referred to on page 5.

A. The costs on page 5 refer only to boxcars and gondola and hoppers, and the costs on page 3 do likewise except that we didn't set it in that fashion.

[fol. 4602] Q. Your language to which I am referring is, "Based on this test it appears that the overall costs for the South, excluding Kentucky, are above the costs for the East, excluding the Pocahontas region, by a small amount, possibly one or two per cent."

All I want, and I don't believe that is in that table over here—maybe it is—but I would like for the record to show the South excluding Kentucky versus Official Territory as a whole, and the South excluding Kentucky compared with Official Territory including Kentucky.

Commr. Aitchison: Including what?

Mr. Grubbs: Including Kentucky.

A. We have set up cost scales in this Exhibit 195, Table 1, showing those comparisons on I think every conceivable basis.

The purpose of this data on pages 3 and 4 is merely to briefly summarize it.

This material here was not necessarily in response to your request, or the request of the Governor of Kentucky.

Our response to such request appears in Exhibit 195, page 5, which provides all the comparisons I think you have mentioned, and you can draw them off directly yourself.

By Mr. Grubbs:

Q. The fact is, Dr. Edwards, that Mr. Kennedy here has drawn them off roughly. You didn't state them here. You stopped with a comparison of the South minus Kentucky versus Official Territory minus Pocahontas in your [fol. 4603] discussion on page 5, and I simply wanted that carried two steps further.

If it is agreeable when you are off the stand if you will check these figures, and if they are all right, if you will put them in the record, that will satisfy me and we can move along.

A. Do you want me to have that checked?

Q. If you will do that, that will be fine.

A. Yes, sir.

Q. I would like to ask you to turn to page 13 of your narrative statement.

Commr. Aitchison: That is Exhibit 196.

Mr. Grubbs: That is right, yes, sir.

By Mr. Grubbs:

Q. I have in mind item 10. As I understand your answer as given under this item designation it is intended to be not only in answer to a statement made by Mr. Kerr, but statements by other witnesses for the Southern carriers on the general proposition that they have taken that if costs are no higher in the South than in Official Territory, our rate level being higher we should have come out through the years much better than the official lines. That is what you have undertaken to do, to answer all the southern witnesses at one stroke in this item 10.

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

[fol. 4604] Q. You say that you conclude that the freight revenues in the South exceed those in the East by from 3 to 5 per cent. You have used the East there, I take it, as the Eastern District again.

A. As the term is used there, it refers to either the Eastern District or Official Territory. The exhibit that this refers to worked out the comparisons on both bases.

Q. Yes, sir. When you say from 3 to 5 per cent, do you mean the rate level in the South exceeds that of Eastern District by 5 per cent and Official Territory as a whole by 3 per cent?

A. No, sir. I meant by this that the rate level in the South exceeds that of both the Eastern District and the Official Territory by from 3 to 5 per cent.

In the exhibit it so happens that it worked out, I believe, 5 per cent using the Eastern District, and 3 or 4 per cent using Official Territory, but by virtue of the approxima-

ns that enter into that I have merely drawn the overall conclusion of 3 to 5 per cent.

Q. Suppose we turn over to pages 50 and 51 of your discussion in that connection.

You there say, in the second paragraph, that considering Eastern District as compared with the South, the excess of the Southern revenue level would be 5.5 per cent. That is the correct figure, I take it, isn't it?

A. Yes, sir.

[fol. 4605] Q. And if the comparison is made South with the whole of Official Territory the excess is 3.9 per cent.

A. Yes, sir.

Q. Then you say that those figures, however, need to be adjusted some-and you set up a table over here on page 51 that is designed to indicate what the adjustment should be. That is correct, isn't it?

A. Yes, sir.

Q. And then you say that the Eastern revenue level is somewhere between 3 and 5 per cent. Aren't you referring there to the Eastern District?

A. Are you referring to the statement reading, "Such overstatement is greater by something over"——

Q. (Interposing:) No, the statement on page 51, "This would have the effect of narrowing the difference between the Southern and Eastern revenue levels to somewhere between 3 and 5 per cent."

A. And your question is what I mean by Eastern?

Q. That is right, right there.

A. Again, I mean either the Eastern District or the Official Territory.

Q. I see.

A. We treated each separately and the results came out so closely, and there are certain degrees of approximation in that transposition of rates structures that we felt [fol. 4606] we could only draw the conclusion that the comparisons were approximately 3 to 5 per cent. We wouldn't attempt to refine them any closer than that.

Q. The figure being 3.9 per cent when you consider Official Territory as a whole, and your revision under Pocahontas being greater than for Eastern District, what would you say about the whole of Official Territory if you left out of consideration Eastern District? Would you say

that would be about 3 per cent, would bring that excess down to about 3 per cent?

A. I didn't follow that last question.

Commr. Aitchison: Read it, please.

(Pending question read.)

Commr. Aitchison: Do you mean Official Territory less the Eastern District?

Mr. Grubbs: No, less Pocahontas, I mean.

Commr. Aitchson: It seemed to me that your question is incomprehensible.

Mr. Grubbs: Suppose we strike that question.

By Mr. Grubbs:

Q. As to Official Territory alone, the excess figure is 3.9 per cent. That is correct, isn't it?

A. Yes, sir.

Q. And the greatest adjustment that must be made, according to your table, is for Pocahontas. That is correct, isn't it?

A. Yes, sir, that is about 4 per cent.

Q. If you considered Official Territory as a whole and [fol. 4607] left out of consideration Eastern District, what would your figure be, your excess figure?

A. I couldn't answer that. All figures include weight of the Eastern District, and if I left the Eastern District out of this, I can't conceive of any rational answer.

Q. I mean Official Territory as a whole.

A. Minus the Eastern District, that is what you said, I believe.

Q. I am striving to get what would be the figure alone for Official Territory.

A. It would be a composite of 101 and 104 for Eastern and Pocahontas versus 105 in Southern.

Q. And what would the excess Southern level over Official level be?

A. If what?

Q. With the adjustment that you make to bring down the 3.9 Official figure.

A. Well, again, if we did what?

We made the adjustment and it comes out—looking at these figures we came to the conclusion that the gross revenues in the South were overstated more than they

were in Official Territory, and of course these comparisons were made based on gross revenues before absorptions.

In view of the fact that the Southern region gross revenues were 105.6 per cent of their net revenues, which were the figures we would have liked to have worked with [fol. 4608] if we had had them, and in view of the fact the comparable figure for the Eastern District was 104, and Pocahontas 101, we felt that the Southern region gross revenues overstated their net revenues in the case of the Eastern District by about 1 per cent and in the case of Pocahontas region by about 4 per cent.

The Pocahontas region, of course, constitutes a minor part of the entire Official Territory, but we felt some adjustment should be made.

Mr. Smelker: Dr. Edwards, will you try to keep your testimony in the first person if you mean the first person.

The Witness: Therefore, when I found the revenue level for the South as compared to the Eastern District was 5.5, and for the South compared with Official would be 3.9 per cent higher, or roughly 4 to 5 per cent, we felt that we should give recognition to this other factor and we shoved the figures down by about 1 per cent.

If we left the Pocahontas region out of the picture entirely, there would still be about 1 per cent. If you bring them in, they would probably be a little higher.

Commr. Aitchison: I haven't the faintest idea what this is all about, and I don't believe anybody else has except you two gentlemen.

By Mr. Grubbs:

Q. The level in the South, the general revenue level as compared with Official Territory you find to be 3.9 per cent higher for the South.

[fol. 4609] A. Yes, based upon a comparison of the gross revenues by commodities.

Q. And when you make that adjustment that you referred to, it would bring that excess figure of 3.9 per cent down to about what?

Mr. Smelker: What adjustment do you refer to?

Mr. Grubbs: The adjustment he has just referred to on page 51.

A. We adjusted it by 1 per cent.

By Mr. Grubbs:

Q. Which would bring it down to about 2.9 per cent.

A. We didn't trim it that close, Mr. Grubbs.

I don't know whether the rate level in the South is higher or lower than in the East by 5.39 or 5. We can't figure that close, but the figures came out 3.9 to 5.5 working with the carriers' unadjusted gross revenues, and we found that included in some cases L.C.L. pickup and delivery absorptions.

In the case of the Southern Railway it includes refrigeration revenues which shouldn't be in there, so that we then checked to see if there was that degree of exaggeration in all of the carriers' revenues by territories, and we found the South had about a 1 per cent greater exaggeration than the Eastern District, and about 4 per cent greater exaggeration than the Pocahontas region.

In one case the drop from 3.9 to 3 and the other 5.5 [fol. 4610] based on gross revenues, we dropped them roughly to 3 and 5.

In one case the drop from 3.9 to 3 and the other 5.5 to 5, but we rounded them off because we can't say we are right; we are certainly within 1 or 2 per cent.

Q. Would it be a fair conclusion from these figures that the South's rates are just about as favorable as those in Official Territory considering the whole body of rates in each territory?

Commr. Aitchison: Repeat the question, please.

(Pending question read.)

Commr. Aitchison: Favorable to whom?

Mr. Grubbs: Are the rates in the South as favorable to the shippers of the South as the rates in Official Territory are to the shippers in Official Territory.

Commr. Aitchison: You mean actually or by comparison with costs or by comparison with other territories, or what do you mean?

Mr. Grubbs: Dr. Edwards has reached the conclusion, as I understand it——

Commr. Aitchison: (Interposing:) You can tell me which you want him to answer.

Mr. Grubbs: I am talking about rate levels. That is what these figures are designed to indicate, rate levels. His figures indicate that the rate level——

Commr. Aitchison: (Interposing:) You mean the ones on page 51?

[fol. 4611] The Witness: No, sir, not the table.

Mr. Grubbs: Not the table, no. His 3.9 on page 50 indicates that that is the extent by which the Southern rate level exceeds the official rate level, or revenue level it probably should be termed, if it is true that the Southern rate level exceeds Official level only by about 3 per cent; then my question is, isn't it a fair conclusion from these figures that the Southern people have just about as favorable a level as the Official people do, when you consider the whole body of the rates.

Commr. Aitchison: Do you understand the question?

The Witness: Yes, sir.

Commr. Aitchison: Answer it.

The Witness: I can't answer it yes or no. I will have to answer it by a brief explanatory statement.

It indicates that taken as a whole the amounts paid for the transportation in the South are 3 to 5 per cent higher than the Southern shippers would pay if they enjoyed Eastern rates.

Commr. Aitchison: As a whole.

The Witness: As a whole. It applies to all commodities.

Commr. Aitchison: As well as class rates?

The Witness: Class rates and commodity rates.

Commr. Aitchison: But you have attempted to take out such matters as deductions for pickup and delivery and [fol. 4612] switching absorption and refrigeration and so on.

The Witness: We haven't taken those out, sir. We have noted that as apparently about 1 per cent lower in the gross revenues in the South than in the Official, and therefore having gotten a comparison of about 3.9 to 5.5, we moved it down to roughly 3 and 5 in recognition of that.

Commr. Aitchison: Does that 3 to 5 apply to the freight revenues as a whole, excluding the pickup and delivery, switching absorption, refrigeration revenues, and matters of that sort?

The Witness: Yes, roughly that would be the result.

Commr. Aitchison: And of course your 3.9 is not related to your 5.5. Your 5 figure is not related to class rates as such.

The Witness: No, sir. This figure comprehends the rates on all commodities, both low grade and high grade, and it also comprehends the existing divisions in 1939.

Mr. Grubbs: Were you through, your Honor?

Commr. Aitchison: Yes.

By Mr. Grubbs:

Q. Assuming no change is made in Official Territory rates, if a substantial reduction were to be made in the rates of the Southern carriers, or any important block of traffic without compensating rate increases on other traffic, the result might very well be, if your figures are to be relied on, to plunge the general rate level in the [fol. 4613] South lower than the general rate level in the North, isn't that true?

Commr. Aitchison: Are you going ahead and deciding the Division's case for us?

Mr. Grubbs: No, sir.

Mr. Spelker: Do you understand the question, Doctor?

The Witness: Yes, sir. If you lowered a large considerable block of rates, that would be true.

It would depend upon the volume of the traffic upon which the rates were lowered, and the extent of the reductions. That just mathematically follows.

By Mr. Grubbs:

Q. Returning to page 15, your next answer to the Southern lines' general proposition which you are discussing in item 10 was that in 1939 the South had a better return than Eastern District. That is not true if you use Official Territory in the place of Eastern District, is it?

A. I can tell you in just a moment. No, I am sorry, I can't tell you.

The South had a higher return than the Eastern District, but the Pocahontas region had a return of over 9 per cent. I would have to combine those two territories and get a weighted average.

Q. You say thereafter that the South's rates of return has been a little higher than the East for the six year period 1936 to 1941 inclusive. I take it you again refer [fol. 4614] only to the Eastern District. Is that true?

A. Yes, sir.

Q. Suppose you took the ten year period 1930 to 1939, which you used back on page 4 to support your 1939 fully distributed costs showing, and used the whole of Official Territory, the result would be entirely different, wouldn't it? I mean it would show costs to be higher in each year except 1938, the Official Territory?

A. Are you speaking of costs or return?

Q. I mean return.

A. I don't know. I know the Eastern return would certainly go up if we included the Pocahontas region.

Q. Do you recall any year except 1938 when the Official lines' rate of return was not materially higher than the rate of return of the South

A. I couldn't answer that one way or the other for any year.

Mr. Norman: May I interrupt right there? Do you know about the 1942 rate of return of the Southern carriers as compared with Eastern carriers?

The Witness: No, sir.

By Mr. Grubbs:

Q. Now turn to page 21, if you please, sir.

In answering Mr. Kennedy's question about the representativeness of the year 1939, you presented a table which is known as Table V, and I will ask you to turn to that table, which is the table in Exhibit 195, Table 5, sheet 25.

[fol. 4615] A. Yes, sir.

Q. You show the results for all years from 1920 to 1941, stated in gross ton miles, net ton miles and car miles, and you do not show anywhere, do you, the average hauls for those years?

A. No, sir.

Q. Do you think that a ton mile figure or a car mile figure standing alone, is of any significance?

A. Any significance for what? For comparison between districts?

Q. Yes.

A. No, it is of no significance for comparison between districts. It is only used in here, as we have stated, for comparisons year to year in the same district, assuming there would not be any significant change in the average length of haul within the same district year to year.

Q. Did you make any test to determine whether that assumption was justified, that is to say, that there would be no change in haul from year to year?

A. Well, we have examined the changes in the average length of haul over a period of years for the country as a whole, and found it is a long, slow increase, a very slow increment of increase per year. That is all I can say on that.

Q. That is for the country as a whole.

A. Yes, sir. That led me to the conclusion that there would be no significant increase from year to year within [fol. 4616] the same territory. That might not be true for 1942, however.

Commr. Aitchison: Or 1941?

The Witness: Yes, 1941 may be influenced.

By Mr. Grubbs:

Q. Turn to item 28, if you please, sir.

Mr. Smelker: Page 28, do you mean?

Mr. Grubbs: On page 33, item 28.

By Mr. Grubbs:

Q. There you recognize the validity of Mr. Kennedy's criticism about non-inclusion in your count of loaded cars switched in crosstown switching, and you say you have made a test using eight Eastern railroads.

What eight Eastern railroads did you use?

A. I will have to furnish you with that.

Q. All right, sir. And you also say ten Southern railroads. Will you furnish that at the same time, sir?

A. You want the list of all the roads included in that reference?

Q. That is right.

A. East, South and West?

Q. Yes, sir.

A. Yes, sir.

Q. I will ask you next to turn please to item 40 at page 41. There you say, just immediately prior to the table which appears in the center of that page near the bottom, that this table gives the results of applying the cost scales which you have developed. Is that correct? Have you applied any [fol. 4617] cost scales to determine those results shown?

A. Are you referring to the third sentence above the table?

Q. That is right.

A. We applied our scales of unit costs, that is right.

Q. The scales taken from what exhibit?

A. Of Exhibit 13, Table 1, the table of unit costs.

Q. It is a table of unit costs?

A. Yes.

Q. Rather than a cost scale.

A. Yes, it is a table of unit costs. It differs from the cost scales that I introduced in Exhibit 3. However, they serve the same purpose except that by showing the table of unit costs we saved a great deal of paper.

Q. Did you make a test with the cost scale shown in Exhibit 3 separately from the test based on your unit costs in Exhibit No. 13?

A. No, sir.

Q. You didn't make that calculation?

A. I withdraw that. We did make a tentative calculation of that type for the United States as a whole.

Q. What did it show?

A. It came out close to 100 per cent. Whatever it showed is in my testimony in the St. Louis hearing.

Q. You didn't make that test for the regions or the districts within the United States?

[fol. 4618] A. No, sir, for the reason that as I have indicated in this testimony, the exhibit 13, table 1 data, and the data in table 1 of Exhibit 195 better reflect the cost for varying weights of load, so therefore we restricted our comparison to that data.

Q. Will you please turn to item 43 on page 43?

In the discussion under that item you undertake to answer the showing made by Mr. Kennedy that costs in the South were from 6.9 to 13.7 per cent higher than costs in Official Territory, and you set forth in the pages that follow page 43 the criticisms that you have of Mr. Kennedy's showing.

A. Yes, sir.

Q. At the top of page 47, or rather the first paragraph beginning with, "If Mr. Kennedy's exhibits," you say, "If Mr. Kennedy's exhibits are restated to remove the first five sources of error listed above, Mr. Kennedy's showing is reversed." Is that true?

A. Yes, it is true; the comparison of the South versus the Eastern District.

Q. There are three comparisons made by Mr. Kennedy with which you deal there. That is true, isn't it?

A. Yes, sir.

Q. And one of them deals with South versus Eastern District, and two with South versus Official Territory. That is correct, isn't it?

[fol. 4619] A. Yes, sir.

Q. And it is only as to one of them that you reverse his showing, that one being the comparison of the South versus Eastern District; isn't that true?

A. Yes, I guess you would state that as true. We reworked this so many ways.

Whatever we reversed was his conclusion based on his exhibit that the costs in the South were higher than the costs in the Eastern District.

As to Official Territory, we also reached a different figure than included there. It wasn't enough to reverse it, that is, throw it above or below the 100 per cent index.

Q. The one case where you say you reversed a showing is set forth by you in your Exhibit 195, I believe, at pages 6 and 7. That is correct, isn't it?

A. Yes, sir.

Q. Looking at page 6, line 36, the ratio that you show Southern costs to Eastern District is 1.012.

A. Yes, sir.

Q. Now, you reduced that figure which shows a slightly higher cost to the Southern and Eastern District by the use of this last calculation which is based on an average haul per shipment developed by you. That is the way you get at that?

A. That is right.

Q. That average haul per shipment has been developed [fol. 4620] by use of Dr. Aitchison's figures for two day movement in 1942. That is correct, isn't it?

I mean the corrections which you have made in the figures are based on the two day study of Dr. Aitchison.

A. The exact figures we used are based on that, but we only used Dr. Aitchison's study to provide an adjustment for about 10 per cent of our count of tons.

Q. Yes, sir.

A. Our original material before we started picking up the adjustments for interterritorial count goes back to Mr. Kennedy's work papers in connection with his Exhibit 18, identification 3.

Q. And his use of the Coordinator's average hauls.

A. That is right.

Q. By commodities.

A. That is right.

Q. Do you think that the movement in 1942, the traffic movement in that year, was substantially the same as that in 1939?

A. Oh, I can't comment on that. There have certainly been changes. I haven't made any analysis.

Q. Would you think that a two day movement in 1942 could fairly be taken as an accurate indication of what took place in 1939?

A. There are some approximations there. However, our use of that figure was not to obtain any specific movement [fol. 4621] of traffic. It was to obtain the ratio of the interterritorial tons moving into and out of a district compared to the tons originated and terminated.

Commr. Aitchison: Do you know any better figures to ues as a check, that *is* available?

Mr. Grubbs: Is the question addressed to me?

Commr. Aitchison: I am asking the witness.

The Witness: No, sir, there is no better basis available.

Commr. Aitchison: Is there any other basis available that you know of?

The Witness: I think our basis was the proper basis. The only question at issue would be whether the character of the tonnage had changed enough during the two base periods to make it non-representative.

Commr. Aitchison: Do you know anything about any other showing that is available to you which would give a more accurate picture of traffic in 1939?

The Witness: No, sir. I would like to make the explanation in that connection that our count of tons originally was the same as Mr. Kennedy's.

By Mr. Grubbs:

Q. I understand.

A. In other words, a count of tons excluding duplication. We can take the count of tons which originated or termi-

nated, whichever is the greater, but we found that left us short about 10 per cent of our tons, so that if there were a 10 [fol. 4622] per cent error in the sample it would affect the total count of tons by 1 per cent.

If there were 20 per cent error in the sample, it would affect our total count by only about 2 per cent, because we had approximately 90 per cent of our tonnage direct.

Q. As I understand your statement, there are corrections based on the bridge tonnage that moved and other inter-territorial traffic, those two types of corrections.

A. Yes, sir.

Q. Do you happen to have your work sheets with you that show your bridge movement in 1942?

By the way, before I ask you to answer that, I will ask you—I notice you used only one day as to the bridge count. Why did you use only one day there, and two days as to the other?

A. We used that for two reasons. The first reason was that the count of the bridge tons was an extremely laborious task. We had to go through about 137,000 bills. We couldn't run them through the machines, and it took a couple of men I think a month or six weeks to provide that.

When we got through we found they were only adding 1 to 2 per cent to the count of tons, and we also found that when we had made our studies based on two days versus our previous study of one day, we ultimately came out with the same answer, so inasmuch as the bridge tonnage had a very negligible effect on the result I don't [fol. 4623] think it affected the final conclusion whether we put in the bridge tons or left them out, and in virtue of that and in virtue that the bills of the two days' study weren't available to us, we satisfied ourselves with one day.

Q. Do you recall the number of bridge tons that were added to the South's showing? It was about three and a half million, wasn't it?

A. It can be obtained directly from the record. We show the tons excluding bridge and including bridge tons in Table 3 of my Exhibit 195.

Q. Oh, do you? Isn't it true that the biggest part of the bridge ton movement in 1942, so far as the South is concerned, consisted of petroleum products?

A. I don't know, but I can find that out for you if you wish to know.

Q. I would like to know, sir.

A. Will you tell me specifically what you want on that?

Q. I want the total number of bridge tons and the proportion that petroleum tonnage was of that total—I mean petroleum, gasoline, and so forth.

Commr. Aitchison: I don't want to appear to be censorious, but this exhibit you are questioning about has been in the hands of respondents for 30 days, and it was understood that Dr. Edwards was available for elucidation of any [fol. 4624] matters such as you are now asking on the stand, and would be developed during this whole time.

Mr. Grubbs: It was only two weeks ago, your Honor, that we got the work sheets I have in mind here, and it was only a few days ago in fact that I was able to reach the point in my examination where I located these figures.

Commr. Aitchison: The point I am making is, it is hardly necessary to put requests for details of this sort into the record when it could be made and would be cheerfully answered by the witness outside.

Mr. Grubbs: I have just one other question.

By Mr. Grubbs:

Q. As I understand it, this exhibit on page 6 is for a ten year period.

A. Yes, sir.

Q. And you have used the average haul ascertained in the manner that you have described for the year 1939 to the whole ten year period; is that correct?

A. Yes.

Q. Each year in the ten year period.

A. Yes, sir. The actual figures are not important. It is the relativity that is important in that average haul. The spread between the average hauls is what counts.

You can change those figures substantially, but I would like to point out that Mr. Kennedy has used the average haul per ton, whereas his method provides for the use of average [fol. 4625] haul per shipment.

We have used the average haul per shipment, which is the better form.

Mr. Grubbs: That is all. Thank you, Dr. Edwards.

Commr. Aitchison: Mr. McCollester.

Cross-examination.

By Mr. McCollester:

Q. Dr. Edwards, will you turn to page 18 of your statement, Exhibit 196?

A. Yes, sir.

Q. This question is just for clarification, or at least for explanation.

In your item 16 you are criticizing Mr. Kennedy's statement of the revenue effect on the carriers of the South from transplanting to the South the Eastern rate level.

I follow you through the first sentence of your answer where you state that your restatement shows that the revenue loss for the Southern roads would be $23,500,000 instead of $39,000,000, as indicated by Mr. Kennedy. But can you tell me where in your exhibits we can find the figure of $1,509,766, and just what that figure represents?

A: That figure is Mr. Kennedy's exhibit. I don't have the number, but he refers to it in the transcript at page 408.

That figure $1,509,766 is a matter of simple addition for the individual commodities. You add them up and they come out $1,509,766.

[fol. 4626] Mr. Kerr I think had some serious errors there in treating his groups.

I think he had an extreme duplication in there also in adding individual commodities or commodity groups and then adding carload again, but if you take the addition by individual major commodity groups, products of agriculture, products of mines, products of forests, and l.c.l., and simply add them up, you come up with $1,509,766.

Q. That represents then, does it not, the revenue effect upon the Southern carriers of both the reductions in their revenues resulting from the application of the Northern rates where they are higher, and the increases in their revenues where their rates on raw materials and other commodities on which their rates are lower are brought up to the Northern level.

A. My opinion is that figure simply does not mean anything.

Mr. Kerr's approach to the treatment had very extreme errors in it. No matter what he arrived at, any figure he arrived at, could not possibly have had any meaning or significance.

I have indicated that in item 15, that it is a sort of statistical miscarriage in there.

Q. If I correctly understand you, you prefer Mr. Kennedy's computation and your conclusion is that it is more accurate to state that the transplanting of the Eastern rate level to the South would produce a revenue loss for [fol. 4627] the Southern carriers of some $23,500,000.

A. Yes, but to make your terms correct, it isn't a matter of preferring it.

Personally I couldn't accept Mr. Kerr's computation because it has errors that might give you anything that would have no meaning.

I think Mr. Kennedy's procedure is preferable, particularly as we have restated it to get a better count of tons.

Q. Your restatement in other words shows that the Eastern rate level, even increasing the rates in the South where they are on a lower level than they are to the northern level, would mean a revenue loss to the Southern roads of some $23,500,000?

A. Yes.

Chmn. Alldredge: Would you allow me to interject a question there?

Mr. McCollester: Certainly, Mr. Commissioner.

Chmn. Alldredge: Would that statement also involve a substitution of the divisions as well as the rates?

The Witness: Yes. Mr. McCollester I think referred to rates in the beginning of his statement.

This whole matter treats of revenue effect. We work with the gross revenues reported by the carriers, and the Bureau's freight commodity statistics and that of course contains their divisions on interterritorial traffic.

Chmn. Alldredge: So a substitution of rate system would [fol. 4628] have to carry with it, before the revenue results you refer to would be obtained, a substitution of divisions also.

The Witness: We merely refer to a substitution of level of earnings based on the 1939 divisions and rates.

Chmn. Alldredge: Of course that involved both divisions and rates.

The Witness: Yes, sir.

By Mr. McCollester:

Q. And if there were transplanted to the South only the portion of the Eastern rate level which is lower than the Southern rate level, without transplanting the portion of the Eastern rate level which is higher than the Southern rate level, your revenue loss for the Southern lines would be substantially more than the $23,500,000 that you show here?

A. Yes, sir.

Q. On page 9 of your statement, Exhibit 196, you make reference to the lower ratio of empty to loaded car miles in the South as compared to the North.

Have you any figures as a result of your study to indicate whether in the handling of any particular traffic, let us say beans or iron and steel articles, or what you will, the ratio of empty miles that can be attributed to the movement of any particular commodity is different in the South than it is in the North?

A. No, sir, except insofar as the type of car had a different empty return in the South than in the North.

[fol. 4629] Commr. Aitchison: Some of them don't have any different relation and can't have, such as petroleum and tank cars.

The Witness: Yes, sir.

By Mr. McCollester:

Q. On that same page you point out that while your Exhibit 13 shows higher line haul costs for the Southern Territory than for the Eastern, the Southern costs as computed by you are brought down by their low terminal costs.

Is it not a fact, Dr. Edwards, that the very thing that the South is complaining about here, namely the fact that it has relatively fewer industries with industrial switching with fewer cities involving congestion, that these are the factors which are responsible for the lower terminal costs, and that an increased industrialization of the South would tend to increase their terminal costs.

A. Yes, sir. The bigger the city, the bigger the terminal cost. That follows.

Q. And probably the more factories there are, with plant layouts, complicated switching to serve them, the higher their terminal costs would go.

A. Yes.

Commr. Aitchison: How about terminals that aren't being used to capacity?

The Witness: I don't get the import of your question, Mr. Commissioner.

Commr. Aitchison: Well, suppose in one of these terri-[fol. 4630]tories the terminals were not being used to capacity. Does that make for relatively lower terminal costs?

The Witness: Yes, in so far as the expense of the fixed plant is concerned.

As the terminals, however, reach capacity, then there tends to be congestion and the terminal costs begin to rise again.

Commr. Aitchison: To the extent you have a switch engine standing in the yard only doing 10 per cent of the work which it might do, those costs which are not fixed costs, are relatively higher, aren't they?

The Witness: Yes, they would be relatively higher.

However, we find in switching studies if you have a small way point the switching minutes may only be 10 minutes or 15 minutes per car on a boxcar in setting it out.

When you get to a large complicated layout, such as Pittsburgh or Detroit, or San Francisco, the switching minutes would be 40 or 50 or 60 minutes per car to reach a factory. It may have to pass through two or three yards and receive two or three transfers.

Commr. Aitchison: You still don't get me. I don't make myself plain.

There are yards where the switching is not done by line crews, are there not?

The Witness: Yes, sir.

[fol. 4631] Commr. Aitchison: And some of those are not used to capacity.

The Witness: No, sir.

Commr. Aitchison: That is because they are not sufficiently industrialized so that the yard crew is worked to its, I won't used the word "capacity", I will say optimum.

The Witness: Yes; in those situations an increase in the traffic volume with the same number of crews would cut cost.

Commr. Aitchison: That is not a fixed cost, but is in addition to the fixed costs; is that right?

The Witness: Yes, that is right.

Mr. Norman: May I ask a question right there?

Doctor, if they had this increase in the factory that Mr. McCollester speaks of, which increased the movement in the terminals thereby increasing the terminal cost, wouldn't that necessarily increase the density of traffic on the load haul, thereby reducing that cost?

The Witness: Yes. I don't want to prognosticate too much. Since we started on it, however, if that has happened, that would be a result.

Commr. Splawn: Do you know of any switching yard that is utilized to a point of saturation at the present anywhere in the country? I don't mean during the war emergency, but normally.

[fol. 4632] In your studies of switching have you run across any that are utilized right up to their capacity?

The Witness: I couldn't answer that, Mr. Commissioner. I asked that at the Potomac Yards when we were over there some time ago, and their superintendent said they wouldn't know what their capacity was until they were pushed badly enough and then he would find out.

By Mr. McCollester:

Q. Dr. Edwards, on page 10 of your Exhibit 196 you make the statement that it is your opinion that the fact that unlike commodities are handled (I suppose you mean unlike commodities handled in the different territories) does not affect this accumulation of the quantities of homogeneous service units that are consumed in the rendition of a service, but is it not a fact, Dr. Edwards, that the length of haul and the average loading and the time required for unloading and the time required for loading, to mention only a few matters that may affect cost, vary with different commodities and that therefore the consist of the traffic does affect the units of cost which are accumulated.

A. I was referring not to the differences in the consist between territories, but the differences in the consist of two cars.

One might contain butter and one might contain eggs. Now, if one loads heavier you will produce more gross ton miles, and we treated gross ton miles of butter, eggs or fish [fol. 4633] in the conclusion as being homogeneous units.

Q. I see. Then I will have no quarrel with you if what you meant to say there was simply as to a single car, if it has a given weight and is going a given distance, your serv-

ice units do not vary depending on whether it is butter or something else in it, except as to refrigeration or some special service.

A. Yes. We tried to price our cost on homogeneous units that would be interchangeable, avoiding the net unit.

Commr. Aitchison: You don't mean, by the manner in which you have left your answer, to suggest, or do you mean to suggest, that all the matters Mr. McCollester mentioned would have an effect upon carrier costs?

The Witness: No. I meant to take his statement back to the beginning and point out that we weren't referring to all the things he was talking about, so I am making no reply to his first statement.

Commr. Aitchison: He spoke about the length of time if takes to load a car. That is primarily a shipper's concern, isn't it?

Mr. McCollester: Doesn't that affect cost in the car ton?

Commr. Aitchison: Maybe.

The Witness: We accumulated that based on the estimated actual time it takes the average shipper to load his car.

Commr. Aitchison: And if that is too long, he pays de-[fol. 4634] murrage, so it may affect revenues.

Mr. McCollester: But I am talking about costs.

By Mr. McCollester:

Q. Now, Dr. Edwards, skipping over to pages 16 and 17, which goes to the general basis on which you have made your studies, that is the territorial basis, your studies have been made for, we will say, the Southern region or the Eastern District in the same way that you would make a study for those particular regions if all of the railroads in each territory comprised one system. Isn't that correct?

A. Yes, it is equivalent of that.

Q. So that your studies, if we were to apply revenue against cost, might be all right as the basis might yield us costs that could be used if there were some method by which the losses from one end of the system could be offset by profits from another end of the system. Isn't that correct?

In other words, your average treating the Eastern District carriers as a whole, or as one system, the average is the figure you would get if all costs for the system were put into one, and if the carriers got revenues enough to meet

that cost on the average the system would be on a paying basis regardless of the fact that some end of it might be losing money and another end might be making more money.

A. Yes, sir, their costs are irrespective of whether one carrier might make 8 per cent and another zero.

We have developed the cost at the rate of return of 4 [fol. 4635] per cent for all carriers and gotten the average cost.

There are differences of 10 to 15 per cent in the cost between carriers in a single territory, so that some are going to have more profit and some are going to have less profit, if one assumed that the costs were converted into rates, as I gather that is the basis for your statement.

Q. Then on the basis of assuming 4 per cent return as an element of cost, if you have variations of as much as 15 per cent, you have some carriers, that under a rate system that would yield average cost for all, would lose money.

A. Yes, they certainly wouldn't make 4 per cent.

Commr. Aitchison: Is that the way you find it in actual practice at the present time?

The Witness: No, we don't find them all making the same return. Some are bankrupt and some may be relatively prosperous, but as to whether they are bankrupt or they are prosperous, the rate structure must be the same for both if they are in competing territories, or if one applies a uniform rate scale.

You can't help the poorer railroad by giving them higher rates. Nobody would ship over that railroad if they could avoid it.

By Mr. McCollester:

Q. Well, we won't argue the law on that point right now, but turning to the South, your studies, as I understand from them, your recent ones, indicate that the railroads in Ken- [fol. 4636] tucky have lower costs than the rest of the South so that if you eliminate Kentucky from the South, it has the result of increasing the average cost for the other railroads.

A. For the remainder of the South, including those portions of the same roads in the remainder of the South.

Q. Looking at it from another angle, you have testified in your statement that your studies indicate that a substantial volume of coal traffic tends to reduce the unit costs of all

traffic for a railroad or a group of railroads. Isn't that correct?

A. Yes, if you have enough of it.

Q. The fact is, is it not, that there are four of the so-called Southern railroads that have very substantial volumes of coal traffic, much greater than the remaining railroads in the South?

A. Well, they have a substantial amount.

Q. Have you made any computation to determine the extent to which the coal traffic over the L. and N., Illinois Central, Southern, and Clinchfield has operated to reduce the average costs for the territory as a whole below what the average cost would be for lines like the Atlantic Coast Line and the Seaboard if computed separately?

A. No. I can give you the effect if you left out the State of Kentucky, but we haven't computed the cost for the [fol. 4637] Atlantic Coast Line, Seaboard and Florida East Coast separately. But you would assume, would you not, that it would be substantially higher than the average computed cost for the South as a whole?

A. I don't know, but I would judge it would be higher. If they don't have the density of traffic——

Commr. Aitchison: What is that? The Atlantic Coast Line doesn't have the density?

The Witness: I say if they don't have the density of traffic that the Illinois Central and the L. and N. has, their costs would be higher, which would account possibly for these 10 or 15 per cent differences that I have stated existed between railroads within a territory.

I haven't made a study of those carriers' separate costs I don't know whether they are lower or higher.

By Mr. McCollester:

Q. If I correctly understand your comments on Mr. Bell's testimony, which are contained in the last part of your Exhibit 196, one of the points that you made in your opinion was that while the fact that coal traffic of the Pocahontas lines amounted to some 83 per cent of their total traffic might justify taking the Pocahontas lines for cost purposes out from the rest of the Official Classification lines, nevertheless the fact that the L. and N. might have 66 per cent coal traffic didn't justify taking it out from the rest of the Southern lines.

[fol. 4638] A. Well, Mr. Bell took out railroads whose percentage was 66, 58, 32 and 32, and I point out if one were going to lift out those, one should go to the East and lift out B. and O. with 45, Pennsylvania with 45, Erie with 43, and New York Central with 48.

Q. You think that should not be done, do you, as to the East?

A. No, I don't think you should lift them out. You can't do that without lifting out most of the class rate traffic also.

Q. What is your opinion, or if you have no opinion I am satisfied, as to whether the Pocahontas lines should be lifted out from the other Official Territory lines.

Commr. Aitchison: For what purpose?

Mr. McCollester: Of arriving at a cost, an average cost, for Official Territory for use in this proceeding.

A. I would express no opinion on that.

My position would be that we have developed the costs with and without, and in the South with and without Kentucky, and it would be left to the Commission and the rate makers to determine how they want it.

By Mr. McCollester:

Q. And if from your previous testimony there has been deemed by any of us any impression that you have expressed an opinion as to whether the Pocahontas lines should be or should not be included with the other Official lines in arriving at an average, you want it now understood that you have made no such opinion and express none on the [fol. 4639] record here?

A. Yes, I have stated the reason why we did it. I don't say what the Commission should do.

Mr. Norman: You have given us your reasons though for excluding it from the Official Territory.

The Witness: That is right.

Mr. Norman: You don't want to change those reasons, do you?

The Witness: No. We have stated why we separated them, because the characteristics were different, and because the Commission in other cases had indicated a desire to develop the need for other railroads excluding the Pocahontas. We have now given them to the Commission both ways.

By Mr. McCollester:

Q. The "why" does not include any opinion on your part as to whether the average costs for Official Territory should be computed including or excluding the Pocahontas lines.

A. For what purpose?

Q. For the purpose of this proceeding.

You said you told us why you had done that, but I want to just put on the record that the "Why" doesn't include any opinion on your part.

A. I have stated why for cost purposes it should be separated, and I still believe we should give it to the Commission in that form.

[fol. 4640] Q. Why do you think you should give that to the Commission in that form? Why do you think you should give the Commission for cost purposes a showing of the Pocahontas lines separate when their coal traffic is 83 per cent, and should not show separately a line in the Southern Territory which may have up to 66 per cent coal traffic?

A. The answer I will give to that is that we have separated an analogous situation in the South, one might consider partly analogous in Kentucky. In some degree Kentucky is to the South what the Pocahontas is to Official.

We have shown the East with and without Pocahontas and we have shown the South with and without Kentucky, but I certainly don't think it is analogous to lift out the Pocahontas from the Eastern District, lift out those three roads, then turn to the South and lift out the three roads that account for most of the class rate traffic.

Mr. Smelker: Isn't this cross becoming more or less argumentative, just arguing back and forth?

Commr. Aitchison: It is pretty hard to draw the line, of course.

By Mr. McCollester:

Q. Just where would you draw the line for cost purposes as between 83 per cent, where you would make an exclusion and 66 per cent, where you would not?

A. Well, you are begging the question.

That 66 per cent is perhaps highly concentrated in Ken-[fol. 4641] tucky and it is not 66 per cent for the other roads. It gets down to 58, 32 and 32.

Q. I will take 66 and 58, then.

A. You asked me where I would draw the line?

Q. Yes.

A. I would draw it where I have drawn it. Most of that coal is in Kentucky apparently; probably half of it is in Kentucky.

Q. Yes. There is coal in Illinois, is there not?

A. Yes.

Q. There is coal in Alabama.

A. Yes, sir, and we have taken that into consideration and let the result of that have its effect on the cost.

If there is coal in Illinois, that will serve to reduce the cost of class rate traffic in Illinois. If there is coal in Alabama it will serve to reduce the unit cost in Alabama.

Commr. Aitchison: If we are going to go into that way of making a large and necessarily broad cost study, we would have to give special consideration, wouldn't we, to the ore carriers?

The Witness: Yes, sir, that is right.

Commr. Aitchison: Carve them out and make a special group of them, wouldn't we?

The Witness: Yes, that is right. We made an analysis of lifting out the Northern Pacific ores operations and found it affected the Western District as a whole by about one-[fol. 4642] third of one per cent.

By Mr. McCollester:

Q. One more question along that line, Dr. Edwards, so that the record may be clear.

You have made no separate study, have you, lifting out from Official Territory those portions of the New England lines which are in New England group B return and take higher than the Official level of rates elsewhere?

A. Are you separating between A and B?

Q. Yes.

A. No, we only separated New England as a whole.

Q. Would it be possible to make a separation between A and B in the method that you have followed here in your studies?

A. I don't know. It depends upon the degree to which those carriers broke down their major expense items by divisions and the degree at which those divisions broke in the separation from the A and B totals.

Q. So that it will be in the record, you will say that therefore when you include in Official Territory all of New Eng-

land you are including costs of carriers that in a part of New England have a higher rate level than the general rate level in Official Territory.

A. That is right.

Commr. Aitchison: Is that also true of the northern part of Michigan?

Mr. McCollester: Northern part of Michigan and the [fol. 4643] northern part of New York.

Chmn. Alldredge: Is it also true of Florida?

The Witness: Florida has a differential territory; that is right, yes, sir. We included that in the South.

Mr. McCollester: That is all I have.

Commr. Aitchison: Am I correct in understanding one reason you show Pocahontas separately was that there was a general request that you should do so that was evidenced at one of the hearings here or before the hearing?

Mr. Grubbs: It wasn't general.

The Witness: No, I don't understand it springing from anything at the hearings. There was a request at the hearing that we take Pocahontas and group it with the Eastern.

Commr. Aitchison: Is that the reason you did that?

The Witness: And we did that, yes.

Mr. Norman: But when you were proceeding on your own ideas of what to show, you showed Pocahontas separately and took it out of Official.

The Witness: Yes, when we started out we left it separate.

Cross-examination.

By Mr. Plunkett:

Q. Will you turn to page 9 of your Exhibit?

Commr. Aitchison: May I follow up this last idea, Mr. Plunkett?

To what extent are your Western costs influenced by the inclusion of the Mountain Pacific roads?

[fol. 4644] The Witness: I don't think they are influenced to any extent at all in this exhibit. We separated the Mountain Pacific territory from Western Trunk Line and Southwestern, and the costs for those three areas came out within 1 or 2 per cent of the average cost of the Western District as a whole.

Commr. Aitchison: You were able to make separations on lines such as the Santa Fe and the Milwaukee.

The Witness: Yes, sir; yes, we had separations.

Commr. Aitchison: All right, Mr. Plunkett.

By Mr. Plunkett:

Q. Will you turn to page 9 of your Exhibit 196?

A. Yes, sir.

Q. In your item 3 you reply to a statement made by Mr. Kerr at page 363 of the record in which he stated that the averages in the cost study which you made are produced by wholly unlike things, one territory versus another, or even one carrier versus another.

On page 10 you say that you believe that a gross ton mile is a gross ton mile whether it is made up of fertilizer, logs, cotton or electric refrigerators. That is correct, isn't it?

A. Yes, sir.

Q. That is the basis of your cost study, is it not? You have determined the average cost per gross ton mile in a territory and then you have computed for any given movement the number of gross ton miles that may be involved by taking the pay load and the tare weight of the car and [fol. 4645] the ratio of empty to loaded car miles and you have priced out those gross ton miles by the territorial average.

A. Except we used more units than just a gross ton mile.

Q. I am speaking with reference to gross ton miles.

A. You are speaking of the cost averaged with the gross ton miles?

Q. Yes; you also had cost averaged with car miles and cars handled.

A. Yes.

Q. And you treated each gross ton mile in the territory the same as every other gross ton mile in that territory.

A. Yes; those extended initially were averaged with gross ton miles.

Q. Assuming over a given space of time a given locomotive can handle a maximum of 5,000 tons of cars loaded with coal, an average load of 50 tons per car, what would you say as to whether or not that locomotive could handle 5,000 tons of empty coal cars over the same piece of track, having in mind the difference in the friction and increased number of wheels, and so forth?

A. If its maximum is 5,000 loaded tons, its maximum with empty cars would be somewhat less than that.

Q. And to the extent that it was less——

A. (Interposing:) That is providing you had—well, I will [fol. 4646] stop there.

Q. And to the extent that the maximum for empty cars was less than for loaded cars, it would take more train miles and locomotive miles to haul a given number of gross ton miles of empty cars than it would loaded cars; is that correct?

A. Yes, the friction per ton mile is greater empty than loaded.

Q. And would the same thing be true comparing 5,000 tons of coal in loaded cars with 5,000 tons of livestock in loaded cars with an average of 10 tons per car?

Commr. Aitchison: What cost are you inquiring about, Mr. Plunkett, all costs or transportation costs?

Mr. Plunkett: I am speaking for the moment of his out of pocket cost, for that is the foundation.

Commr. Aitchison: If the witness is going to answer that, I want him to take into consideration the effect of weight at a constant speed upon tracks.

Mr. Plunkett: I was going to add the speed in the next question, but I first wanted to see whether he had the opinion or was of the opinion that a given locomotive could handle 5,000 tons of loaded cars of coal over a given piece of track, if the same locomotive could handle 5,000 tons of livestock at the same speed over the same piece of track.

The Witness: You are assuming the first locomotive is working to capacity?

By Mr. Plunkett:

Q. Yes.

[fol. 4647] A. Not on a straight and level track. The resistance is reduced the heavier the load.

If you have some differences in grade, one-half per cent or one per cent grade, those factors that Professor Smith worked out 20 years ago, of the University of Illinois, indicate the influence of friction for varying degrees of weight becomes a minor factor if you have some grades in there.

Commr. Aitchison: That friction means of course damage to the track structure.

The Witness: Yes. Mr. Plunkett, however, still hasn't got to the effect of it.

By Mr. Plunkett:

Q. Suppose that a given locomotive could handle 5,000 tons of coal in loaded cars at a speed of 20 miles per hour, would the same locomotive be able to handle the same number of tons of livestock at a speed of 40 miles per hour? I presume the answer is obvious there.

A. I don't follow you. Will you read the question, please?

(Pending question read.)

The Witness: I don't know. It would depend upon the speed restriction and how big the locomotive was, and many factors, and I don't follow your point.

By Mr. Plunkett:

Q. Assuming the locomotive was operating to its capacity when it hauled 5,000 tons of coal at a speed of 20 miles an hour, would the number of tons of livestock that the same locomotive could handle, at the speed of 40 miles per hour, [fol. 4648] be very much less?

A. It would have to be less, yes.

Q. It would have to be less?

A. Yes, it would be less on the coal too if it handled it at 40 miles per hour.

Chmn. Alldredge: You are assuming it would be over the same track?

Mr. Plunkett: Over the same track, yes, sir.

By Mr. Plunkett:

Q. That being true, Doctor, is it correct to say that a gross ton mile is a gross ton mile no matter what it consists of?

A. I would say for the purpose of this case it is.

In other words, I will frankly state that we have not taken into consideration the factor of resistance per ton. It is true that the drawbar pull required per ton falls somewhat as the weight of the load increases, and that factor may be fairly important if all other factors are equal and all locomotives are operated to capacity.

You might have less fuel consumption per ton mile on those trains than the others, but carriers I think are influenced a great deal by schedules and the maximum rating may not be obtainable.

There is also the factor that if you have grades involved they become much more important than the factor of sheer resistance as the weight load increases, and there is also [fol. 4649] this factor in treating the effect of resistance that a large part of the cost, the crew cost for example on trains of the character you speak of are on a per mile basis, and they get paid for 100 miles whether they make it in four hours or in eight hours. If they run into overtime it might affect it.

Commr. Aitchison: May I ask if the cost Mr. Plunkett has been inquiring about, Doctor, as you understand it, included maintenance of equipment and maintenance of way.

The Witness: Not maintenance of equipment; maintenance of way.

Commr. Aitchison: Is included therein?

The Witness: It is included.

Commr. Aitchison: In your answer to Mr. Plunkett?

The Witness: Yes, sir.

Mr. Plunkett: Maintenance of locomotive would be included, would it not?

Commr. Aitchison: As well as transportation expense.

The Witness: Maintenance of locomotive and fuel and train crews.

By Mr. Plunkett:

Q. And maintenance of track?

A. Yes, that is in maintenance of way.

Commr. Aitchison: I think we will have to suspend until two o'clock.

(Thereupon at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m., the same day.)

[fol. 4650] Afternoon Session

2 p. m.

Commr. Aitchison: You may proceed.

Ford K. Edwards resumed the stand:

Cross-examination (Cont.).

By Mr. Plunkett:

Q. Doctor, will you turn to page 89 of your exhibit 196. In item 8 you referred to the exhibit put in by Professor

Day and the testimony that he gave, in which he compared your costs with the rates on a number of important items handled by the transcontinental lines, such as lettuce and melons and lumber and similar traffic.

You have that in mind?

A. Yes, sir.

Q. And you said on page 89 that Professor Day took his figures from your Exhibit No. 3 and should have taken them from your Exhibit No. 13. Do you have his Exhibit No. 192 in mind?

A. I have it generally in mind, but I do not have it with me.

Q. Do you recall on page 3 he showed the rates on these various commodities I have mentioned, compared with the cost level 5-A, from your Exhibit 3 and also 5-A from your Exhibit 13?

A. I recall that he did that, yes, sir.

Q. And also that he compared them with the out of pocket costs shown on your Exhibit 13?

A. I don't recall that, but if he did, that is correct.

Q. You don't recall whether or not the out of pocket costs [fol. 4651] exceeded the rates in numerous cases on that page?

A. No, sir. I was referring to the fully distributed costs, 5-A and 5-B. That is where the error would occur.

Q. Now, isn't it a fact that your out of pocket costs, as shown by Exhibit 13, were higher in ten cases out of sixteen than the rates on these important commodities on which the transcontinental lines rely for their traffic? Wouldn't that seem to indicate that your out of pocket costs were too high, at least as far as the transcontinental lines are concerned?

A. No. They neither indicate the rates or costs were too high, but they might indicate rates were low on the long haul movement to New York City, which takes the extreme length of that rate blanket.

Q. But these are commodities, are they not, Doctor, on which these transcontinental lines rely for a large part of their traffic; lettuce, oranges, melons, apples, lumber, pears, and so forth? How could it be that they could continue to operate very long with rates less than the out of pocket costs on some of the important commodities?

Commr. Aitchison: Well, I have not heard some of those cases in which the rates were fixed. I wondered myself how they could.

Mr. Plunkett: But they have been able to exist under them.

A. My answer is that Professor Day's selection could not [fol. 4652] have been typical. If you will refer to my Exhibit 195, page 45, column 11, you will note that those commodities that you have not listed, taking the revenues as a whole and not by specific movements, are above the out of pocket costs.

On oranges and grapefruit the ratio of revenues to fully distributed costs, including returns, loss and damage, was 76; lemons, 81; cantaloupes and melons, 73, so that it would appear that the items you have selected are not typical of the revenue producing ability of those commodities when taking all movements as a whole.

By Mr. Plunkett:

Q. Well, then, what conclusion do you draw from the fact that in the Western District the costs on, or the rates on oranges and grapefruit are only 70 per cent of the fully distributed cost?

A. I was referring to column 11. Column 6 is based on a 4 per cent return. Column 11 is based on the return actually realized.

I draw the conclusion that they yield something slightly above the out of pocket cost of handling them, but as a whole are not as contributory as the remaining agricultural products as a whole, which was 89 per cent of cost.

Q. What would you consider would represent the out of pocket cost; what percentage of the whole, in column 11?

A. Approximately 65 per cent.

Mr. Plunkett: I think that is all I have.

[fol. 4653] Commr. Aitchison: Anything further, Mr. Plunkett?

Mr. Plunkett: Nothing.

Commr. Aitchison: Any more cross examination of Dr. Edwards?

Mr. McCollester: Mr. Commissioner, I haven't any cross examination, but if I can find it, I would like to refer, for the record, to one place at page 12 of Dr. Edwards' statement where he uses an expression "transportation burden"

and states at the bottom of page 12 which I interpret as meaning the constant or indirect expense.

I may be laboring under a misapprehension myself, but it seems to me that if the term "transportation burden," as that expression has been frequently used and will be frequently used throughout this case, is taken to mean what Dr. Edwards says here, as the constant or indirect expense, we will be arguing at cross purposes.

My impression of the term "transportation burden," the meaning of the term is that it is the total of all costs of maintaining the transportation system in any section of the country.

By Mr. McCollester:

Q. Do you think I am wrong, or have you authority for your use of the term, Doctor, as meaning only overhead or constant expense?

A. Well, I have noted decisions of the Commission where they have held that one form of traffic should not throw a [fol. 4654] burden on other traffic. I think that general principle has been adhered to, in so far as the Commission could apply it, with the evidence at hand. If that principle is adhered to, then no commodity would move below its out of pocket or direct cost of handling it.

That being true, the only items left to distribute are the indirect or constant costs.

Q. Well, have you gathered the impression that when we have talked throughout this case of the difference in the distribution of the transportation burden, in different territories, that we have talked about different overheads of the line?

A. I have talked about those elements of cost which are distributable, in the last analysis, on a value of service basis rather than on a cost basis.

Commr. Aitchison: Well, it is a good deal like the kind angel in Alice-in-Wonderland who made things corresponding to any definition which she chose to give.

Chmn. Alldredge: Traffic witnesses usually use that term to indicate that the distribution of the general rate burden, don't they? That is what they mean when they use it, usually, isn't it, and not cost.

Mr. McCollester: Either one. I think you are correct, Mr. Chairman.

A. If I might state, since we are coming to grips with the problem of wanting to know what the burden is, you have to [fol. 4655] make a measure of it in some way to know what you are talking about. If commodities cover the direct cost of handling, and then you speak of a burden where there is nothing left but the constant costs, and those are the only costs that are distributable on a value of service basis.

If you adhere to the theory that nothing should move below out of pocket costs, you thus throw a burden on other traffic, so it is just a matter of rationalization, it seems to me.

Mr. McCollester: I think I understand why you use the term in the sense you do, but I think it well to note on the record that that sense of the term is different from the meaning of the term in which it is usually employed by most of us. Maybe you are correct; I don't know.

Commr. Aitchison: If there is nothing further, then, Doctor, you are excused.

Mr. Smelker: Just one question.

By Mr. Smelker:

Q. Throughout your Exhibit 196, your prepared statement, Doctor, you have referred to Exhibit —. Wherever that occurs you mean Exhibit 195, do you not?

A. Yes, sir.

Commr. Aitchison: Do you have anything further, Mr. Smelker, to present?

Mr. Smelker: Nothing further at this time.

Commr. Aitchison: Dr. Duncan was asked to be present [fol. 4656] for cross examination at the Washington hearing. Do you care to cross examine him?

Mr. Smelker: No, your Honor.

Commr. Aitchison: Does anyone else care to cross examine Dr. Duncan?

Mr. Bell: I had no idea that Dr. Duncan would be here today.

Commr. Aitchison: Well, possibly he won't be. I am just asking whether anybody else wants to cross examine him.

Mr. Bell: Dr. Duncan has some further direct. You will recall the work sheets underlying Dr. Fredericks' Exhibit 104 furnished subsequent to the Indianapolis hearing, and Dr. Duncan has a statement in regard to Dr. Fredericks'

testimony, and then he will be present for cross examination of the testimony at the Columbus hearing.

Commr. Aitchison: All right. Now, Mr. Ribe was informed on his request that he might produce certain additional testimony on the first day of the Washington hearing. Is Mr. Ribe here?

Mr. Ribe: Yes, I am here, your Honor.

Commr. Aitchison: Do you want to go on today?

Mr. Ribe: Yes, sir, either today or tomorrow. I could not get a reservation though until tomorrow afternoon.

Commr. Aitchison: I see.

Mr. Ribe: So there is no hurry until tomorrow.

[fol. 4657] *Commr. Aitchison: I see.*

Mr. Ribe: So there is no hurry until tomorrow.

Commr. Aitchison: Now, Mr. Weeks, chief weight expert of the Missouri Commission, was told in a letter on December 18 that he would be afforded an opportunity at this hearing to rebut evidence produced by Mr. Dade for the Kansas Commission in connection with Exhibit 113. That exhibit was received subject to check. Is Mr. Weeks here?

Mr. Weeks: Yes, sir. I am ready to proceed at any time you wish.

Commr. Aitchison: Well, suppose we clean up those two things before we go in. Mr. Weeks, you might come forward.

William A. Weeks was sworn and testified:

Direct examination.

By Commr. Aitchison:

Q. Will you give your name and your position, and then make your statement, please?

A. All right. My name is William A. Weeks. I am employed by the Missouri Public Service Commission as chief rate expert. I have had more than 20 years' experience in taxation rate work. I have prepared an exhibit which I would like to have identified.

Commr. Aitchison: That will be Weeks Exhibit 197.

(Exhibit 197, Witness Weeks, marked for identification.)

[fol. 4658] A. This exhibit consists of 36 pages; this exhibit is a reproduction of tables appearing in Exhibits No. 113 offered by Witness E. B. Dade, except that on pages 2 to 17, inclusive, I have shown certain figures which have been underlined. Those figures which have been underlined indicate that there were errors in computation on Witness Dade's exhibit or errors in drawing the figures from the original sources.

For example, on page 2 the mileage on the C. B. and Q. System in Kansas is shown on Witness Dade's exhibit as being 227.73, whereas the correct mileage is 222.73.

In addition to those changes, I have allocated the various data of the M-K-T. System to *to* North Missouri, whereas Witness Dade allocated the figures to south Missouri.

I have changed the Missouri Pacific from the north Missouri system to a south Missouri system, for the reason that 69.1 per cent of the M-K-T. mileage is located in North Missouri, and 63.1 per cent of the Missouri mileage of the Missouri Pacific is located in south Missouri, and that seemed to me the only basis on which that should be allocated.

I call your attention to the fact that Witness Dade shows a system mileage of the Missouri Pacific of 11,462 miles, whereas the correct mileage is 7,148 miles. Apparently Witness Dade had taken the total mileage of the Gulf Coast Lines, the I. and G. N., Missouri Pacific and Texas & Pacific to arrive at the 11,000 miles. I think those [fol. 4659] figures were carried over into certain other parts of this exhibit, which makes a change.

I would like to call the Commission's attention to the change in comparison of north Missouri and south Missouri with the operations in Kansas which are shown at the bottom of each of the pages as a composite, shown in this exhibit, and also as compared with Witness Dade's exhibit.

By Commr. Aitchison:

Q. What is your conclusion from all that?

A. I merely wanted to show that, first of all, there were numerous errors in Exhibit 113, in computations.

Q. Is it all right now that you have got it corrected?

A. No, sir; I don't say it is all right. I don't enfirely

agree with the showing that Kansas has made, even with the corrected figures. I just wanted the Commission to receive the correct picture rather than to receive the incorrect figures.

By making the allocations of the M-K-T. and the Missouri Pacific as they should be *be* allocated; it also makes a better showing for north Missouri than for Kansas.

The last three pages of the exhibit contain the underlying figures from which the computations in the preceding pages were made.

From page 18 to page 33, inclusive, I have shown a comparison of this data for those roads that have operations in both Kansas and Missouri, whereas the first [fol. 4660] part of the exhibit has all the Class I railroads, with the exception of the M. and I. Railroad, which is a part of the Missouri Pacific System, and the Missouri-North Arkansas Railroad, and the reason those were omitted was because I did not have the data for those roads, that is, system figures.

I used, as my underlying basis, the Commission's statement No. 41-200, and that only includes such roads having operating revenues over $5,000,000, and therefore I did not have the figures for those systems.

There is a correction that should be made on page 14 and page 30. The correction has been made on the exhibits that have been distributed to the Commission, but it has not been made on the other exhibits that were distributed.

Under the column headed 205 plus 207 plus 208 plus 269, it should read "Plus 205 plus 207 plus 208 divided by 269."

And on page 34 there was a typographical error. It now reads "Dates not available", and it should read "Data not available."

Q. Have copies of this exhibit been distributed?

A. They were placed on the table outside of the hearing room at 10 o'clock this morning, and each group of exhibits was marked for the parties that were to receive them, in compliance with the mimeographed statement that was distributed at the Indianapolis hearing.

Q. Have you conferred with Mr. Dade at all about these changes?

[fol. 4661] A. No, sir, I have not.

Q. Did you send him a copy of your exhibit?

A. No, sir, I have not.

Q. Is that all you care to say?

A. That is all I have. I would like to offer the exhibit in evidence.

Commr. Aitchison: Without objection Exhibit 197 will be received.

(Exhibit 197, Witness Weeks, received in evidence.)

Commr. Aitchison: Any cross examination?

Mr. Gray: Mr. Commissioner, this exhibit has just come into my hands, and I have had no opportunity to check it over. I don't know that I will want to cross examine Mr. Weeks, but I would like to reserve cross examination until at a later time.

Commr. Aitchison: You may stand aside then, subject to being recalled. You let us know, won't you, please, if you care to cross examine Mr. Weeks further?

Mr. Gray: Yes.

(Witness excused.)

Commr. Aitchison: Now, Mr. Ribe.

A. J. Ribe was sworn and testified:

Direct examination:

[fol. 4662] The Witness: My name is A. J. Ribe, and I have previously testified in this proceeding at Columbus, Ohio.

I have four additional exhibits which I would like to file, and I ask permission now to number them for the record.

(Exhibits 198, 199, 200 and 201, Witness Ribe, marked for identification.)

The Witness: At Columbus I filed Exhibit 153, in which I showed the traffic balances on all carload traffic in the Southern region for the years 1940 and 1941.

Now my exhibit 198 is a companion to that exhibit, and compares 1941 with the year 1929.

In Exhibit 198 I have added some information, additional information on the traffic balances by the five com-

modity groups. The information is shown, at the end of each group, and is fully explanatory. I would have liked to have gone back prior to 1929, but I found in the early middle Twenties that the commodity groups did not move with the commodity groups today.

In my Exhibit 199, I have made a study of the raw materials originated and terminated by the Southern railroads for the years 1929 and 1941. I have grouped these raw materials into two groups which are designated by Items 1 and 2. In the first group are the raw materials which, in my opinion should be considered, rather than those in the second group on Item 2.

I merely want to call your attention to the fact that [fol. 4663] during this 12 year period, on the first group of raw materials, there has been the shift of the traffic balance from nearly 1,000,000 tons outbound in 1929 to more than one and three-quarter million tons in 1941.

By Commr. Aitchison:

Q. Inbound.

A. Shipped from outbound to inbound, yes, sir. And the items also show the shift in the number of commodities.

As to those commodities which I have excluded, and which are raw materials and are included in this exhibit too, I have given the reasons for the exclusion of those items on sheet 2.

In preparing Exhibit 199, I find that I overlooked including two raw material groups. These are No. 280, covering fish and sea animal oil; the movement in connection with which is very small. The other group is No. 491, being the steel ingot group, including such articles as blooms, billets, and slabs.

I intended to say, Mr. Chairman, in connection with my Exhibit 198, that in answer to a question by Mr. Norman at Columbus, I stated that sulphate of ammonium was included in commodity group 701. I have since found that that was an error, so for the benefit of the Commission I have, in Exhibit 198, beginning with page 5, shown all of the commodity groups which are assigned to No. 392, which is products of mines N.O.S.; No. 491, which is the steel ingot group, and No. 701, which is the manufactures and miscellaneous N.O.S.

[fol. 4664] I am unable to account for that error, unless I got confused with sulphate of alumina. Sulphate of aluminum is in the fertilizer group, in the Commission's statistics.

My Exhibit No. 200 is a reissue of the rate study that I made on page G-18 of my Exhibit 152, with the addition of Milwaukee as a northern point of origin, and Birmingham, Atlanta and Chattanooga as southern points of origin. I wanted to include or add the last three points shown in the exhibit, because I believe that they are more representative of the South as a whole than are Greensboro, North Carolina, and Nashville, Tennessee.

In my Exhibit No. 201 is the identical same study as in Exhibit 200, except that it is limited to points in the deep south and by that term I mean east of Louisiana, Mississippi, Alabama, Georgia and Florida.

It will be noted, for example, to this particular part of the South, that if the Eastern scale, class rate scale, was used, that to the 28 destinations included in the study, Detroit, for example, would get an average reduction, first class, of 70 cents per hundred pounds, and Birmingham 38 cents per hundred pounds.

At Columbus I touched on all of the figures for page 10 of Mr. Spottswood's Exhibit 76, except the last figure, which is Figure 5. That figure has four bars dealing respectively with pig iron, steel bars, tractors and tools. [fol. 4665] In preparing that chart, Witness Spottswood made at least three errors, but it is only necessary to discuss one of them. The kind of pig iron that moves from the South into Official Territory is foundry iron made by the merchant furnaces, and is used in the North for the manufacture of gray iron castings. It is blended with the northern iron to make a particular type of gray iron castings.

Now, the raw materials for steel, eliminating the ore stage or rather the raw materials are basic pig iron and steel scrap.

There is no movement of basic pig iron from the South to the North, and I have never heard of a movement of that kind. There is a movement, as I pointed out, at Columbus, of scrap.

Now, as to the raw materials for steel, other than scrap, you will find them in commodity group No. 491, which is the ingot group.

Scrap steel and basic pig iron are first converted into ingots. The ingots are next converted into blooms, billets and slabs. The latter three commodities are later converted into finished steel products or into other steel articles for fabrication.

Now, as to commodity group 491, the ingot group, the traffic balance is inbound. For example, in 1941, the South brought in of those raw materials 87,692 tons more than it originated, and in 1929 the figure inbound was [fol. 4666] 205,139, so as to raw materials for steel, the situation is just exactly reverse from that which Mr. Spottswood undertook to portray.

I think that is all, Mr. Commissioner. I offer Exhibits 198 to 201 in evidence.

Commr. Aitchison: Without objection they are received.

(Exhibits 198, 199, 200 and 201 Witness Ribe, received in evidence.)

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. Norman:

Q. Mr. Ribe, your exhibit 200—and I want to see if I understand it—shows the present rates at what the rate would be under the Official Territory basis from the origins named to all these points used by Mr. Hart, is that right?

A. It shows averages of the present rates at the Appendix E scale.

Q. And this shows the reductions that would result by applying the Appendix E scale.

A. That is correct, yes, sir.

Q. What application do you make of this showing?

A. I make this application, Mr. Norman, and if you look at the last column of Exhibit 200, which covers machinery, Mr. Spottswood said that the rate adjustment prevented the South from capturing the textile machinery industry.

You will notice that if the Eastern scale was into Mil- [fol. 4667] waukee, which I believe is about the largest producing section in the country for machinery, they would get an average reduction, carload, of $4.60 per net ton; 23 cents per hundred pounds, whereas the reduction for Birmingham would be 16 cents per hundred pounds.

Q. So, the purpose was to show that the South would be hurt rather than helped by getting a parity of rates.

A. Southbound, because my experience, Mr. Norman, with small industry is that the great majority of them never ship outside of their home territory.

Q. Well, under the rates they had, they could not, could they?

Commr. Aitchison: Oh, let us not argue this case yet. You haven't been allotted any time for it yet.

Mr. Norman: We haven't what?

Commr. Aitchison: You haven't been allotted any time for argument yet.

Mr. Norman: Well, the witnesses apparently have. That is all.

Commr. Aitchison: Anything further?

Mr. Hollopeter: I have a question I would like to ask.

Commr. Aitchison: Very well.

By Mr. Hollopeter:

Q. Mr. Ribe, I believe there is a typographical error on page 2 of your Exhibit 198. Will you refer to the central figure on that, which was designed to show the traffic balances and the percents they bore of the origination?

[fol. 4668] You show .8 of 1 per cent, and should that not be 8.1 per cent?

A. No, Mr. Hollopeter. If you will notice, the total tons originated, 1,400,000 tons, 10 per cent would be—you are right about that. I beg your pardon. You are right. That is a typographical error. That should be eight decimal some figure.

Q. 8.1, I figure it.

A. Yes.

Mr. Hollopeter: That is all. Thank you.

Commr. Aitchison: Off the record.

(Discussion off the record.)

Mr. Norman: I would just like to ask one more question.

By Mr. Norman:

Q. You say it would have an adverse effect on the small manufacturer. What would be the effect on the consumer down there?

A. I don't know, Mr. Norman.

Q. He would get a reduction both ways, wouldn't he?

A. Both ways?

Commr. Aitchison: He says he doesn't know.

Mr. Norman: All right.

Commr. Aitchison: Stand aside. That was all you wanted.

(Witness excused.)

Commr. Aitchison: Off the record.

[fol. 4669] (Discussion off the record.)

Mr. McCollester: Mr. Chairman, as I told you over the telephone, Governor Dewey had hoped to be here as a witness on behalf of the State of New York, but pressure of official duties ensuing from the close of the State Legislature at the end of last week prevented his coming, and he has a statement which he has asked Dr. Catherwood to present on his behalf, and I would like to call Dr. Catherwood to the stand.

Commr. Aitchison: And Dr. Catherwood is going to put it in as his own opinion too?

Mr. McCollester: He will adopt it as his opinion, if the Commission desires, but it is offered as the statement of the Governor.

Mr. Norman: Well, there are some statements in here that I would like to ask the Governor about.

Mr. McCollester: Well, you may ask Dr. Catherwood about it.

M. P. Catherwood was sworn and testified:

Direct examination.

By Mr. McCollester:

Q. Mr. Catherwood, you are New York State Commissioner of Commerce, are you not?

A. I am.

Q. And your office is at Albany?

A. It is.

[fol. 4670] Q. Albany, New York. The Division of Commerce is a part of the Executive Department of the State of New York?

A. It is.

Q. And have you been directed by Governor Dewey to come to this hearing and, on his behalf, present to the Commission a statement?

A. Yes.

Q. Have you the statement before you?

A. I have.

Q. Will you please present it?

Commr. Aitchison: Let us have the witness' full name, please.

Mr. McCollester: M. P. Catherwood.

By Mr. McCollester:

Q. Proceed, please.

A. Mr. Chairman, Governor Dewey's statement is as follows:

It is a matter of great regret to me that I am unable to appear in person before the members of the Interstate Commerce Commission and testify in behalf of the State of New York in the pending interterritorial class rate investigation. The pressure of my official duties incidental to the measures enacted at the legislative session just concluded in Albany makes it impossible for me to arrange to appear in Washington. Accordingly I am obliged to take this means of presenting to the Commission this message concerning a matter which affects the whole economic welfare [fol. 4671] of the people of *the* New York State.

This presentation has a twofold purpose: First, to state on the record the position of the government of New York State as to certain general aspects of the rate situation; and, second, to lay before the Commission certain facts regarding the economic problems of the State of New York which have a direct bearing upon the issues.

I have no pretensions to being a rate expert. What is said with reference to rates is based upon information furnished by others. It is not offered as testimony regarding the rates but as a basis for the views to be expressed.

The government of New York State regrets that the subject of freight rates has become the subject of sectional political debate. It also regrets the implications which have been publicly made of political action in the event the

relief sought is not secured from the Commission. New York believes that the matter of freight rates is so complicated and has such far-reaching consequences that it should be left to the judgment of the Commission on the basis of evidence before the Commission, subject only to judicial review, and that the Commission's independence of judgment should not be jeopardized by threats of political action if the Commission's decision on the evidence does not satisfy the wishes of particular individuals or sections of the country. It is the purpose of the State of New York [fol. 4672] to present to the Commission evidence as to all of the pertinent facts in its possession and to argue its position vigorously and then to accept the determination of the Commission and the courts.

Wholly erroneous statements have been made which require correction. One such statement alleges a freight rate disadvantage to one section of 35 per cent. This greatly overstates the difference between the rates on manufactured articles from the South to the North and rates within the North.

In many public utterances there has been a general absence of reference to the fact that the freight rates on most raw materials within the South are substantially lower than the freight rates on the same raw materials within the North. It has been nowhere suggested that if the rates on manufactured articles are equalized, there should be a similar equalization of the rates on raw materials.

An article in a magazine of national circulation makes the contention that the higher freight rates on manufactured articles in the South prevent the shipment of Southern manufactures to the North for sale and prevent the development of industries in the South. Yet in 1941, the cotton manufacturing industry in the South had developed to such an extent that Southern cotton mills took 88.4 per cent of the nation's cotton crop. In 1940, the industrial processing of hides had advanced to such an extent in the South that it received more hides than it shipped out.

[fol. 4673] Statistics which have been compiled by the New York State Division of Commerce and which have been placed in the record in this case plainly show that neither the freight rates nor any other factors have prevented the industrial development of the South. Instead, the South in recent years has developed industrially more rapidly than any other part of the country. New York has ex-

perienced both the direct shift of its industries to the South and the drying up of manufacturing plants within the State coincidentally with the growth of similar manufacturing plants within the South.

As to the claim that the freight rates operate as a barrier to the shipment of goods of Southern manufacture, the investigations by New York State, as well as common experience, have conclusively demonstrated that many goods of Southern manufacture are freely sold in New York State in competition with goods manufactured right in New York State and frequently set prices which the New York State manufacturers have to meet.

I wish particularly to call to the attention of the Commission certain other phases of the freight rate problem as they affect New York State. If the financial condition of the railroads will not permit rate reductions to achieve the parity sought by the Southern Governors, it follows that such parity would involve an increase in the rates within New York State and the rest of Official Territory. [fol. 4674] Obviously, this would mean an increase in the cost of producing and distributing goods manufactured in New York State, which would make it more difficult for concerns to manufacture in New York State and make it more attractive for them to shift their manufacturing operations to the South. New York State can only view such a result with the greatest concern. The problem of the maintenance of manufacturing industries in New York and the problem of unemployment in New York—and unemployment is a serious problem in our State, particularly in the metropolitan area, in spite of the war boom elsewhere in the country—these problems affect not only New York alone, but the entire nation. New York State embraces over 10 per cent of the nation's population and the national government depends upon New York State for 20 per cent of its revenues.

It is deplorable that this case should be made a matter of controversy between states in a time of national peril when harmony and unity are so essential for victory. It is regrettable, too, that this case should be tried at a time when business is so beset with the enormous problems arising from a wartime economy.

Some have urged a revision of the freight rates in their favor in order that they might be in a better position to attract new industries when the war is over. New in-

dustries from whom, may I ask? Permit me to point out emphatically that the postwar problem for New York with [fol. 4675] its huge population is much more acute.

Approximately 1,000,000 factory workers in New York are now engaged directly in war production. This represents about half of the total factory employment in the State—about one out of every thirteen of its population—and the proportion in war production will be even higher as the war progresses. In addition, there is an unascertainable number of persons employed in non-manufacturing industries who are engaged in work wholly or partly related to the prosecution of the war. The termination of the war will involve an immediate cessation of employment for a large proportion of these workers. New employment must be found for them. Furthermore, more than 1,000,000 New Yorkers will be in uniform when the armed services have attained their full strength, and employment must be found for them when they return. Such employment can only be provided by the restoration of old and the development of new peace-time manufacturing industries in the State. Anything, such as an increase in freight rates, which will make the establishment or reestablishment of manufacturing industries in New York State more difficult, will tend to promote unemployment, create a serious economic and social problem for New York and for the country as a whole and retard the conversion of the country from a war to a peace footing.

New York seeks no special favor or advantage. It does [fol. 4676] not wish to prevent justice to other states on the merits and on the facts. New York did not create the present rate structure. It has been developed over the years in the light of the raw materials, populations, manufacturing conditions and competitive forces in different sections of the country and the business policies and financial requirements of the railroads. Industries have located, workers have made their homes in reliance on the present rate structure. As Governor of the State of New York, I insist that the rate structure should not be changed if there is not the strongest and most convincing proof that it has now become unlawful. To change it for the express purpose and with the result of stimulating a relocation of industry at the expense of New York, of creating unemployment in New York in order, for example, that farm workers elsewhere may be moved from the farms to industrial employ-

ment would be an injustice to the people of New York and I believe an equal injustice and calamity for the nation as a whole.

Q. Now, Dr. Catherwood, you said that you are head of the Division of Commerce of the State of New York?

A. That is right.

Q. For the period from 1938 to 1941 were you chairman of the New York State Planning Council?

A. Yes.

Q. And were you for the same period head of the Division [fol. 4677] of State Planning in the State government?

A. State Planning Council, of which I was chairman, was the head of the Division of State Planning.

Q. And in that connection did you have considerable to do with the so-called Ives Committee, a legislative committee, investigating the loss of industry to New York State?

A. Yes.

Q. And since 1941 you have held your present position as Commissioner, with the creation of the new Division of Commerce, is that correct?

A. That is right.

Q. Now, although you have read this statement, and it is the statement of Governor Dewey, do you, in order that it may be properly in evidence here, and so that the parties may have an opportunity to cross-examine you, adopt Governor Dewey's statement?

A. Yes.

Q. Is it true to the best of your knowledge, as well as his statement?

A. It is.

Mr. McCollester: You may cross-examine.

Cross-examination.

By Mr. Norman:

Q. Dr. Catherwood, will you state if you know on what the Governor of New York bases the statement "that the Commission's independence of judgment should not be [fol. 4678] jeopardized by threats of a political action"?

A. Have I stated that the Governor said the Commission's independence of judgment would be influenced by threat of political action?

Q. You have stated, "that the Commission's independence of judgment should not be jeopardized by threat of political action." I take it that you must mean that it would be jeopardized; if not, then the statement has no meaning.

Now, on what do you base that?

Mr. McCollester: I think you are putting words in the witness' and the Governor's mouth.

Mr. Norman: Well, I read just what the Governor stated.

Mr. McCollester: Well, do you deny that there have been threats of political action?

Mr. Norman: I am asking this witness to answer me. I will answer you on that when the time comes.

By Mr. Norman:

Q. Now, what is your answer to that? On what do you base any such statement as that?

Commr. Aitchison: As what? I think the question has gotten away from us.

A. What paragraph is that in?

By Mr. Norman:

Q. On the first page, in the fourth paragraph, of the quotation from the Governor.

A. The particular reference.

Q. "And that the Commission's independence of judg-
[fol. 4679] ment should not be jeopardized by threats of political action."

A. Well, that was a statement made by the Governor, and in which I am in full agreement, that the Commission's independence of judgment should not be jeopardized by threats of political action.

Q. Well, do you believe it will be?

A. I would make no such accusation against the Commission, but it seems to me clear that threats of political action must have been made, where they were made, with the hope that they would influence the Commission.

Q. And the Governor of New York just wants to register his hope that they won't; is that it?

A. His expression is that it should not; that the independence of the action of the Commission should not be attempted to be influenced by political action.

Commr. Aitchison: I wonder if you won't all stipulate that that is a proper statement.

Mr. McCollester: Maybe Mr. Norman won't. I will stipulate.

Mr. Norman: I won't because I think it is an improper statement for the Governor of New York to make to this Commission.

A. He is not making the statement about the Commission there. He is making the statement about the threat of political action.

By Mr. Norman:

Q. Yes; the effect of the Commission's independence of [fol. 4680] judgment. Well, now, let me ask you another question.

The Governor of New York expresses his reasons for objecting to a parity of rates if it is brought about by increasing the rates in New York.

Do you know whether or not the Governor of New York has any objection to bringing about a parity of rates if it does not result in increasing the rates in New York?

A. If he did, he did not say so in the statement.

Q. Do you, as his representative, have any objection to that?

A. Not as long as any change in the rates for any part of the territory is made in accordance with all of the provisions of the law relating thereto.

Mr. Norman: That is all.

By Mr. Be[illegible]

Q. Mr. Catherwood, on page 1 of the statement, near the bottom of the page, wholly erroneous statements have been made, which require correction.

We, of the southwest, make the statement that the Class rates are 50-odd per cent higher in the southwest—not 35, as you say in your statement—higher than they are in New York State.

Now, are you in a position to correct that statement?

A. I am not in a position to correct, of my own testimony, that statement as it might relate to the southwest or to some particular group or single commodity.

[fol. 4681] Q. Well, don't you say: One such statement alleges a freight rate disadvantage to one section of 35 per cent?

A. Yes.

Q. Now, then, what do you mean when you say that wholly erroneous statements have been made which require correction in connection with that statement?

A. The statement as made there is meant to relate to the following sentence with reference to the 35 per cent.

Q. Then are you going to make any presentation here to show that the claim of that 35 per cent discrimination is erroneous?

Mr. McCollester: Well, on that, Mr. Commissioner——

Mr. Bee: Now, just a moment——

Commr. Aitchison: I think Mr. Bee ought not to ask a witness what is going to be developed by somebody later, and ask him to swear to it.

Mr. Bee: Well, do you mean that this is merely argument, your Honor?

Commr. Aitchison: Not at all.

Mr. Bee: Well, I understand his statement that he is the one that is going to correct this. If that is what he means, of course, I will pass the witness.

Commr. Aitchison: Your question was whether he was going to produce something.

Mr. Bee: In the balance of his testimony.

Commr. Aitchison: Well, he has finished his direct testi- [fol. 4682] mony.

By Mr. Bee:

Q. Then you do not intend to present any testimony yourself to show that the claim is erroneous?

A. I, individually, have no expectation of presenting such testimony.

Q. Now as I understand it, you think before the Commission should make the change in any rate, in any of the territory, it should be sure that the change is made under all the lawful provisions required by law.

A. Yes.

Q. Is that correct?

A. That is my feeling; that the law should be applied in whatever controversy arises.

Q. Now, do you think the Commission should ascertain whether the rates which are applicable in New York were made under all of the conditions that the law prescribes, and if not, so to change them?

A. If any proper agency brought before the Commission the question of whether the New York State rates were legal, I should think the Commission should properly act upon that request within the law.

Q. And you know that that is the question now before the Commission, do you not?

A. What?

Q. As to whether the relationship in the west and the [fol. 4683] relationship in New York is correct.

A. It is my assumption that that is the question before the Commission.

Mr. Bee: That is all.

Commr. Aitchison: Any further cross-examination of Dr. Catherwood? You are excused, sir.

Mr. McCollester: Thank you, Doctor.

(Witness excused.)

Commr. Aitchison: Is that all you care to put on at this time?

Mr. McCollester: That is all I have at this time, yes.

Commr. Aitchison: All right. Then we will proceed with Mr. Gwathmey.

M. Gwathmey: I will call Mr. C. L. Himant, who has previously been sworn.

C. L. Hinnant previously sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Mr. Hinnant, you are connected with the freight traffic department of the Atlantic Coast Line Railroad Company, are you not?

A. That is correct.

Q. Did you testify at the hearing in Columbus?

A. No; at the hearing in Indianapolis.

Q. Have you an exhibit and a prepared statement, both [fol. 4684] of which were distributed at the Columbus hearing?

A. I have.

Q. Pages 1 to 4 of the exhibit and pages 1 to 5 of the statement relate, as I understand it, to the testimony of Mr.

Charles F. Cates, a shipper of pickles at Faison, North Carolina.

Commr. Aitchison: We might have this marked Exhibit 202.

(Exhibit 202, Witness Hinnant, marked for identification.)

By Mr. Gwathmey:

Q. Will you state briefly, Mr. Hinnant, the points which you have undertaken to establish with respect to Mr. Cates' testimony?

A. Yes, sir. On sheet 4 of the exhibit I have restated the comparisons which were made by Witness Cates' Exhibit 78, because I found several errors in his statement.

I have shown by sheets 1 through 4 of the exhibit that if Mr. Cates paid on his movements into and out of Faison, North Carolina, the normal Official Territory level, there would have been very little change, indeed, in the total charges that he paid. The probability would seem to be that he would have paid slightly more than he actually paid.

Q. Witness Donnell at pages 1877 to 1881 of the record referred to the alleged diversification and well balanced character of Florida traffic.

Have you on pages 5 to 8 of your exhibit, and pages 6 to [fol. 4685] 13 of your prepared statement undertaken to refute this testimony, dealing specifically with some of the principal commodities originating in Florida, such as citrus fruit, vegetables, phosphate rock, et cetera?

A. I have. I have made figures which are shown at pages 5 through 8 of the exhibit which, if given careful study, should indicate that the tonnage is not well balanced; quite the reverse:

35 per cent of the tonnage originated in Florida consists of phosphate rock, and in normal times less than 15 per cent of that tonnage leaves the State by rail.

Crushed stone represents something over 16 per cent of the total tonnage originated, and practically none of that leaves the State by rail.

Sand will take up another quite large peregntage; I haven't the figure before me, but about 5 to 6 per cent is my recollection. Practically none of that leaves the State by rail.

Products of agriculture will constitute about 8 to 9 per cent; somewhere between 8 to 9 per cent of the tonnage originated, and most of that does leave the State.

The empty car hauls on practically all of these commodities I have mentioned would be very close to 100 per cent. The number of carloads of perishables, fruits and vegetables, will be, of course, a great deal larger than [fol. 4686] the number of carloads of phosphate rock, sand and gravel, and if you compare the carloads moving instead of tons moving you will get a still better picture of the unbalance of the Florida business.

Q. Witness Donnell at page 1882 and Witness Grady throughout his testimony referred also to the alleged loss of business by the Florida railroads to the trucks and water lines, contending that this is attributable to the high rates of the railroads.

Have you dealt with that subject in some detail in your exhibit at pages 9 to 22 and your prepared statement at pages 16 to 23?

A. In the exhibit this is covered by pages 9 through 12. I have shown here information as to truck movement of perishables from Florida, from the best source that I know to get this information; that is the Florida State Marketing Bureau, Annual Fruit and Vegetable Report for the 1941-1942 Season, and I have a copy of the book here if anyone wishes to examine it to verify any of the figures used.

The vegetable and fruit tonnage moving out of Florida by truck is mostly in private trucks which, as we all know, are not regulated as to freight rates. We have found we cannot well meet the private trucks under present conditions of regulation.

Q. Mr. Hinnant, that information about the rates of the railroads as compared with the rates of the Eastern lines [fol. 4687] is particularly shown on page 19 of your exhibit, is it not?

A. I was going along with more.

Q. All right. Go ahead.

A. Now, on pages 13 through 18 of the exhibit I have analyzed the movement as shown by Witness Grady which takes place through the Florida ports, that is, water movement and it will be noted that for the most part of that movement it is either local port traffic or does have a railroad haul inland, and that on that part of the traffic those commodities which normally move inland, there is practically no Florida arbitrary that can be found in the

rates. In most of them there is no Florida arbitrary whatever.

On pages 19 through 22 of the exhibit I have compared the rail class rates between Florida ports and ports to and from which there have been in the recent past all water transportation with the rates that are published and still on file with the Commission for application by water and with rates made on the basis of the Docket 15879 scale. If we adopted the 15879 scale, we would still be a long way from meeting the rates applicable by the water carriers.

Q. What have you done about Witness Donnell's comparisons, Exhibit 93, pages 1 to 10, of Florida with other States, from the standpoint of tons of freight originated and tons terminated?

A. This is covered on sheets 23 and 24 of my exhibit. [fol. 4688] Witness Don-ell only made the comparisons with the States which had lower tonnage originated or terminated than Florida, except maybe in one or two instances he showed some that had slightly higher tonnage.

I have shown the information for all of the State of the United States, that is, the tons originated and terminated and the tons per mile of road originated and terminated.

I have used the per mile rate, because that is a much better indication of traffic density than just mere tons originated or terminated.

Q. Does that complete your answer, Mr. Hinnant?

A. Yes, sir.

Q. Witness Donnell in his Exhibit 93, pages 8 and 9, draws certain comparisons between Florida and New England. Have you dealt with that tonnage on page 29 of your exhibit, and at pages 27 and 28 of your prepared statement?

A. That is page 27 of the exhibit, sir.

Q. Page 27.

A. Page 27 is the correct page of the exhibit, yes sir. I have.

The land area and the miles of railroad are about the same in Florida as they are in New England. The tons originated in Florida are slightly in excess of the tons originated in New England.

The tons terminated in Florida are much less than in [fol. 4689] New England; that for New England being about two and two-thirds times that of Florida. If you take the total tons originated and terminated, that in New England would be about 60 per cent higher than in Florida.

Q. Witness Donnell at pages 1871 to 1872 refers to an alleged increase of 112 per cent in total revenue freight in Florida, 1940 versus 1921. Have you dealt with that subject on pages 28 and 29 of your exhibit, and pages 28 and 29 of the statement?

A. I have. On page 28 of the exhibit I show for the Atlantic Coast Line, and on page 29 of the exhibit for the Seaboard Air Line the tonnage figures in the states served by those lines for the years 1922, 1923, 1924, 1925 and for the year 1940.

It will be seen that from a railroad standpoint, at least, there is very little improvement for 1940 over any other year of 1922, 1923, 1924 and 1925; in fact, for some of the states and at least for the Coast Line in Florida the revenue tons carried per mile of road for 1940 was less than any of the other years with which it was compared.

Now, I have shown 1922, 1923, 1924 and 1925 because the figures for those years were before the Commission when they gave their decision in 13494, in which the Florida roads were authorized to add the so-called South Florida arbitraries.

Q. What have you to say about the alleged relatively small number of employees per mile of road in Florida [fol. 4690] as mentioned in Donnell's Exhibit 93.

A. Mr. Donnell used these figures for July, 1940. July is one of the lightest months for traffic of the Florida roads. Had he used October or December, almost any month except June, July or August, he would have shown a greater number of employees in Florida.

And I call attention to the fact that in those states which have the greatest proportion of second, third and fourth main line tracks and in those states in which there are general offices of large railroads, there is a much greater number of railroad employees per miles of road than a State like Florida.

Q. Now, Mr. Donnell referred also to railway tax accruals per mile of road, Florida versus other states. Have

you dealt with this subject on page 30 of your Exhibit and page 31 of your prepared statement?

A. I have. On page 30 of the exhibit I have shown for account of the Atlantic Coast Line, and for the years 1939 and 1940, the tax accruals for each of the states served by the Coast Line; also the revenues in those and percentage of tax accruals to revenues; the percentage of tax accruals to revenues would seem to be a much better gauge of how heavy or how lightly the tax is applied than the method used by Mr. Donnell.

Q. In Exhibit 94 at page 10 Mr. Donnell referred to certain rates on phosphate rock from Florida points to Tampa, Florida, for export. Have you touched upon that [fol. 4691] subject on page 31 of your statement?

A. I have. I failed to understand why Mr. Donnell referred to that, and since he said, I would like to correct some of his statements. He used the weighted average haul of 32 miles to Tampa.

Now, that is the weighted average haul which the Commission found in its decision reported 242 I. C. C. 544, but in that same decision they also found that the weighted average haul to Port Tampa, to which the same rate applied, is 50.7 miles.

They also found, or rather show in there that the same rate applies from these phosphate rock mines to South Boca Grande as to Tampa and Port Tampa, and the distance there, while they don't show it, will average from 94 to 110 miles. And if you will take these longer hauls to Port Tampa and to South Boca Grande into consideration, it will reduce materially the per car mile and per ton mile earnings shown by Mr. Donnell.

Anyway the Interstate Commerce Commission found that the rate you refer to is reasonable.

Q. Witness Mauer, in Exhibit No. 92, pages 105 and 107, and Witness Eutsler, referred to the alleged availability of certain Florida industries to compete successfully with northern markets, mentioning among others fiber brushes, candy, furniture, cigars and safety matches.

Commencing at page 32 of your prepared statement, have you dealt separately with the rates on each of these commodities?

[fol. 4692] A. I have. On page 31 of the exhibit I have restated page M-108 of Witness Mauer's Exhibit 92, as he apparently had overlooked the reduced rating which

had been published shortly before his statement was prepared on candy, crystalized or glazed citrus fruit, lel.

I have gone through all of our files dealing with the rates on these commodities which you have mentioned, and with one exception can find where at no place the railroads were asked to adjust rates from the Florida points, the one exception being Jacksonville, and Jacksonville is not in Florida differential territory.

Now, on cigars we have endeavored to get rates that would permit the railroad to handle what we would consider a proper share or a reasonable share of the traffic, and from time to time we have had conferences with the manufacturers in Florida, their representatives, to see what we could do to bring back this movement to rail.

From Tampa we find that any rate that we might have put in by rail, that would be less than the truck rate, would do no good for the railroads at all. They would not get the business.

From Jacksonville we looked into the matter of getting the business, or some of it, back to rail, with no results that we could find from any action we would take. As a matter of fact, one of the largest of the cigar manufacturers [fol. 4693] in Florida owns or controls the bigger part of one of the big truck lines. I verified that by the Commission's annual report from the truck line.

As to fiber and brushes, there is another place where we found that the traffic was being moved by water or by truck or by truck-water-truck, and we sent our field representative to two or three different places, and at two or three different times, to interview the shippers. We have endeavored to establish some rate that would get the business back to the rails. We were promised information as to what rates they thought would let the rails handle it, but although he promised on two or three times, we never got it.

Mr. Gwathmey: Mr. Commissioner, I have undertaken to have the witness merely outline, in the barest detail, the points that he seeks to establish, and which he has dealt with much more fully in his prepared statement. May I ask that the statement be copied in the record, and the exhibit be received?

Commr. Aitchison: Is there any objection?

Mr. Norman: Why not file the statement as an exhibit?

Commr. Aitchison: The statement may be copied, and Exhibit 202 is received.

(Exhibit 202, Witness Hinnant, received in evidence.)

(The statement referred to is as follows:)

The Witness: Among those giving testimony at the [fol. 4694] Indianapolis, Indiana, hearing, concerning the level of rates between the North and the South and, to some extent, between Southern territory, was Mr. Charles F. Cates, who, with his sons, operates a pickle plant at Faison, North Carolina, a local station on the Atlantic Coast Line Railroad 20 miles south of Goldsboro, North Carolina, but grouped with Goldsboro on class rate traffic within the South or between the South and Official territory. The first part of my rebuttal testimony will deal with Mr. Cates' statements and exhibits.

On page 1 of my Exhibit No. 202 is a reproduction of page 3 of Witness Cates; Exhibit No. 78, in which a few corrections have been made in the figures shown by him, and to which I have added a comparison of the applicable rates from Faison, North Carolina, with the normal rates (where different from the applicable level) in Official territory.

I have also added to this exhibit a comparison of the rates on sugar, carload, from Wilmington, North Carolina, and Norfolk, Virginia, to Faison, North Carolina, because on page 3 of Witness Cates' Exhibit No. 78, he shows a considerable movement of sugar from those two origins to Faison, all of that movement being by motor trucks.

The changes in figures as shown in Mr. Cates' exhibit are indicated by reference mark "(c)". We have checked and rechecked the figures where, on page 1 of my exhibit they differ from these shown on page 3 of Witness Cates [fol. 4695] Exhibit No. 78, and feel certain that the figures as changed by me are correct.

On page 2 of my exhibit, I have restated the information shown on pages 4 and 5 of Witness Cates' Exhibit 78, so as to show comparison with what the rates would be on vegetables in brine from an origin in Trunk Line territory to the destinations to which Mr. Cates stated he has made shipments. Mr. Cates' exhibit compares rates paid from Faison with rates as they would be on basis of 27½ per cent of first class under the Official territory scale. Class 27½ does not have application generally throughout Official territory on vegetables, in brine. It is published in Item 4180 of Agent B. T. Jones' Exceptions to Official Classification, ICC 3539, as applying only between points in Central

Freight Association territory, and it is published only on shipments of cucumbers or pickles or onions, in brine, in tank or vat cars.

Twelve of the 38 shipments named on pages 4 and 5 of Witness Cates; Exhibit No. 78 moved in box cars, and, even under the Central Freight Association destination level, the 27½ per cent basis would not have been applicable on those cars.

The applicable rating from Trunk Line territory to Central Freight Association territory, is Class 32-S, and for equal haul from points in Official territory in Virginia, [fol. 4696] Maryland, Delaware or New Jersey the Class 32-S basis would have applied. I have, therefore, shown what would have been paid on these 38 shipments under the level applicable from Trunk Line territory.

The result shows that, instead of the Faison shipper paying $1,883.01 more than if he were located in Virginia north of Southern territory, he only paid $138.53 more, which is only 1.12 per cent higher than the level applicable from Official territory in Virginia to Central Freight Association Territory.

The Column 32-S basis on pickles, which will include vegetables, in brine, unless the latter is separately rated, is of itself a lower than normal rating in Official territory, that rating being flagged to indicate that it is published to meet motor truck and motor ship competition where published in Item 3280 of Agent B. T. Jones' ICC 3539 and being flagged to indicate that it is published to meet motor truck competition where it is published in Item 2830 of Agent W. S. Curlett's ICC A-748. The normal rating between points in Official territory is Class 35.

I have, therefore, restated on page 3 of my exhibit the rates and charges shown on pages 4 and 5 of Witness Cates' Exhibit No. 78, and have compared such rates and charges with the normal level of rates within Official territory.

It will be noted from this that the applicable rates [fol. 4697] from Faison, are, in all instances, lower than the normal rates within Official territory, and had the normal Official territory level been applied from Faison on the 38 shipment the amount charged thereon would have been $925.58 or 7½ per cent greater than was actually paid.

The Interstate Commerce Commission has not required that reduction in one territory for the purpose of meeting truck competition be followed by corresponding reductions

from and to other territories, even where the governing classifications are the same. One instance of where the Commission specifically gave relief from an outstanding order requiring use of Southern Classification, so as not to require the use of Southern Classification rating when the latter is reduced to meet truck competition is its supplemental decision in Western-Southern Class Rate Case, Docket 26510, 232 ICC 81, at page 86.

Similar relief from outstanding order was given in that same decision as to the westbound rates from the South to Western Trunk Line territory where the rates are governed by Western Classification. The Commission also granted similar relief in connection with the rates between points in Western Trunk Line territory and points in Official territory.

It would, therefore, appear that the more proper basis for comparison would be of the going rates with normal rates in the destination territory, and it is for that reason [fol. 4698] that I have compared, on pages 1 and 3 of my exhibit, the going rates with the normal Official territory level.

At page 4 of my exhibit I have made a restatement of the figures shown at page 6 of Witness Cates' Exhibit No. 78, correcting several erroneous figures shown in his exhibit, these corrections being indicated by numbers in parentheses.

On this statement I have also compared the applicable carload rates from Faison, North Carolina, with the truck competitive and the normal Official territory level and have also compared the applicable and normal less than carload rates from Faison with the normal Official territory level, there being no published truck competitive basis for the less than carloads within Official territory.

Attention is called to the fact that to Official territory destinations the excess of the applicable carload rates from Faison over the Official territory truck competitive level ranges from only 5.2 per cent to 22 per cent, and the applicable rates are, in each instance, less than the normal Official territory level, except to one point, Bluefield, West Virginia, where it is only 9.8 per cent higher.

The applicable less than carload rates from Faison to points in Official territory range from 1.2 per cent to 7.6 per cent of the going (normal) rates within Official territory. On less than carloads from Faison to Southern points, the applicable rates are higher than the going or

[fol. 4699] normal rates in Official territory, but the normal less than carload rates which would apply from Faison to the South, do range from 14.6 per cent to 25.9 per cent higher than the Official territory normal level. This leaves only the carload rates from Faison, North Carolina, to Southern points which are appreciably higher than the Official territory level, the range there being from 13 per cent to 34.3 per cent higher, though when compared with the Official territory normal level, the range is only from an even figure to 20 per cent higher.

However, this comparison is not really like with like, because the minimum weight applicable in connection with the truck competitive carload rates to the Southern points is only 20,000 pounds, whereas the minimum weight in Official territory is 36,000 pounds. The minimum weight of 20,000 pounds from Faison to the South was so fixed after conference between Atlantic Coast Line Railroad officials and Mr. Cates, and is an integral part of the adjustment made in those rates for the purpose of meeting truck competition.

I would say here that the Atlantic Coast Line Railroad officials have been in frequent contact with Mr. Cates, have made many adjustments in the rates from and to Faison for the purpose of assisting this industry as well as to meet truck competition encountered, and I believe that a study of pages 1 through 4 of my exhibit will indicate that on the whole the total of charges paid by the manufacturer of [fol. 4700] pickles at Faison is little, if any, higher than if all his rates were placed on the Official territory level; indeed, if the rates on his inbound and outbound commodities were to be all adjusted to the normal Official territory level it is likely that his total freight charges would be increased.

The remainder of my testimony will deal with rebuttal of that given by shipper witnesses concerning the Florida situation.

At pages 1877 to 1881 of Witness Donnell's testimony, (pages 11, 12 and 13 of his mimeographed testimony) he speaks of the greatly diversified traffic originating and terminating in Florida, the fact that the total tons originated are very nearly the same as the total tons terminated and refers to this as indicating that Florida's rail traffic is singularly well balanced, both as to movement through the seasons and in both directions. I here wish to show that the situation is not at all as Mr. Donnell pictures it.

The movement of citrus fruit from Florida now occurs to some extent in each month of the year, but, by far the greater movement takes place during seven months of the year. On this point I show on page 5 of my exhibit the tons of citrus fruit moving via the Coast Line for the seasons 1938-1939 through 1941-42, by months, with the average movement for the four seasons each month and the percentage of each month's average bears to the average [fol. 4701] yearly figure. This shows vividly how the movement fluctuates particularly in the months of June, July, August, September and October from that in the other months of the year, and also shows great fluctuations for the movement by seasons.

The situation as to the movement of citrus fruit from Florida via the other two south Florida roads is similar to that via the Coast Line. The citrus movement from Florida is almost entirely in refrigerator cars, and to a very large degree it is necessary to haul an empty refrigerator car southbound in which to ship this perishable commodity northbound.

The movement of vegetables from Florida follows the general pattern of the movement of citrus fruit, except that the peak months will run from January through May, with fairly heavy movements in October, November, December and June, and light movement in July, August and September. The preponderance of the vegetable movement from Florida is in refrigerator cars, which must be moved to a great extent empty into Florida for the loaded outbound movement.

As was shown in my Exhibit No. 70, page 16, the percentage of empty movement to loaded movement of refrigerator cars ranged from 83.9 per cent to 92.7 per cent for the Atlantic Coast Line Railroad Company, from 89.6 per cent to 94.6 per cent for the Florida East Coast Railway, and from 80.6 per cent to 91.8 per cent for the Seaboard Air Line Railway, during the years 1938, 1939 and 1940.

[fol. 4702] On this important tonnage of citrus fruits and vegetables it cannot be said that it is either balanced or non-seasonal for the reverse is shown by the figures I have just named.

The commodity having the highest tonnage originated or terminated in Florida, is by a great margin phosphate rock. As shown on pages 12 and 15 of Witness Donnell's Exhibit

No. 93, phosphate rock accounted, in 1940, for slightly over 35 per cent of the total tonnage originated in Florida and slightly over 30½ per cent of the total tonnage terminated in Florida.

The figures shown in that exhibit, and, which on this commodity, we have checked to be correct, indicate that for the year 1940, 5,008,942 tons of crude phosphate rock were originated and 4,317,161 tons of phosphate rock terminated in Florida. All of the phosphate rock which terminated in Florida also originated in Florida and it is, therefore, seen that more than 85 per cent of the phosphate rock originated in Florida also terminated there.

Of course, exports or shipment via vessel from the Florida ports of phosphate rock handles via rail to the Florida ports are included in the terminated figures. This phosphate rock which originates and terminates in Florida is a highly specialized movement, involving the use of relatively few miles of road. From the standpoint of balanced tonnage moving between Florida and other states, it contributes, not 35 per cent of the total tonnage moving [fol. 4703] out of Florida, but less than 5 per cent.

There is a large movement of wet phosphate rock from the Florida mines to the drying plants which moved altogether in special equipment assigned to this service only, and which moves on a transit rate of 11 cents per gross ton with 100 per cent empty haul.

The average weighted haul of the wet rock was, for the year 1936, 13.2 miles, as shown in report of the Commission at 243 ICC 525. The movement of phosphate rock from the drying plants to the ports of Tampa, Port Tampa and South Boca Grande is in special equipment designed for and assigned to this service only, and there is an equal empty return haul of the cars for the loaded haul.

The movement to the ports of Tampa, Port Tampa, and South Boca Grande, for export, is on a rate of 75 cents per gross ton. (77 cents under Ex Parte 148), the average weighted haul in 1936 being 44.8 miles, and in 1937, 43.7 miles, as shown in the Commission's report at 243 ICC 525. The title of the case reported at 243 ICC 525 is Phosphate Export Association v. Atlantic Coast Line R. R. Co., et al., Docket 27723.

The movement of phosphate rock to interior points (that is the movement other than the wet phosphate rock to the drying plants and the dry phosphate rock to the ports for

water movement beyond) is to a small extent in the phosphate rock cars such as used in the movement to the ports, [fol. 4704] and on which there is 100 per cent empty return haul. The larger portion of the movement of phosphate rock to interior points is in box cars and there we find a heavy empty movement of the box cars to the phosphate rock field, the inbound movement of other commodities in box cars being much less to the phosphate fields than is sufficient to take care of the requirements for the outbound phosphate rock.

As showing the trend of the phosphate rock movement as between the wet rock to the drying plant, the movement from the drying plant to the port for water movement beyond and movement to the interior, I have shown at page 6 of my exhibit figures for the movement via the Coast Line during the years 1939 and 1940.

The movement of wet rock and the movement to the ports for water movement beyond, and for both of which there is 100 per cent return empty car haul, comprised 81.6 per cent of the total movement of rock via the Atlantic Coast Line Railroad for the year 1939, and 78.84 per cent for the year 1940. Of the movement to the interior, a large portion was consigned to East Tampa, Florida, and on that movement there is 100 per cent empty return car haul. The movement to that point via the Atlantic Coast Line Railroad aggregated 7.65 per cent of the total movement of phosphate rock in 1939 and 7.11 per cent of the total movement of phosphate rock in 1940, leaving only 10.75 per cent in 1939 and 14.05 per cent in 1940 to move to interior points other [fol. 4705] than East Tampa.

From the standpoint of balanced tonnage within Florida this heavy movement of phosphate rock contributes nothing, but, to the contrary, makes decidedly for an unbalanced movement. In so far as concerns the Florida East Coast Railway and around 75 to 80 per cent of the mileage of the Atlantic Coast Line Railroad and Seaboard Air Line Railway in Florida, phosphate rock contributes nothing either toward a balanced movement or to total tonnage handled.

On page 7 of my Exhibit No. 202, I have shown by months for the years 1939 and 1940 the total tonnage, excluding phosphate rock which was handled by the Atlantic Coast Line Railroad, and have shown for each month the percentage which that figure bears to the total for the year, phosphate rock being excluded from all calculations.

Attention is called to the great variation of the tonnage in the various months, for the year 1939, the low figure being for the month of August in which month only 5.1 per cent of the total tonnage for the year originated, while in March the percentage to the total for the year was 12.5; in 1940, the tonnage handled in June was only 5.7 per cent of the total for the year, while that handled in December was 12.2 per cent of the total. The figures for the year 1940 are not as representative of normal conditions as are those for the year 1939, as the movement of defense materials had [fol. 4706] gotten well under way by the latter part of 1940, and, indeed, had made its influence felt throughout that year as will be seen from comparison of the month by month figures for 1939 with those for 1940.

From page 12 of Witness Donnell's Exhibit No. 93 it will be seen that broken, ground or crushed stone originating in Florida for the year 1940 was 2,274,938 tons, slightly over 16 per cent of all tonnage originating in the state, this percentage being greater than for any other commodity except phosphate rock and almost as great a percentage as the total for all manufactures and miscellaneous; while on page 15 of his Exhibit No. 93 it will be seen that on this same commodity the tonnage terminated for the year was 2,197,122 tons, slightly over 15.5 per cent of all tonnage terminated during the year, and next to phosphate rock, a much greater percentage of the total terminated than any other commodity.

The total tons of this commodity terminated represents over 96 per cent of the total tons terminated. Practically none of this movement terminating in Florida originates outside the state and it is safe to say that over 95 per cent of the broken, ground or crushed stone handled within Florida both originates and terminates within the state.

I have not attempted to show the tonnage figures by months excluding also crushed, broken or ground stone, because while that commodity, when moving in Florida is [fol. 4707] almost entirely an intrastate proposition, it does move generally all over the state. However, the movement of this commodity is in open top or gondola equipment, and there is practically 100 per cent empty return haul on the cars used for this movement.

Before leaving this feature of the subject, I would like to point out that the tonnage figures as shown on pages 11 through 16 of Witness Donnell's Exhibit No. 93 do not show

the number of cars required for handling the several commodities or groups of commodities, and without knowing the number of cars required for each class of traffic a proper conclusion cannot be drawn from these figures as to the tonnage being balanced or not balanced.

To illustrate, it is shown on page 11 of his exhibit that the total products of agriculture originated in Florida for the year 1940 represent slightly over 8 per cent of the total tonnage originated, of which oranges, grapefruit, tomatoes and fresh vegetables, N.O.S., accounted for slightly over 6 per cent of the total tonnage originated. The average loading of citrus fruit, tomatoes and fresh vegetables, N.O.S., from Florida approximates 15½ tons to the car. These are commodities which generally require refrigerator cars for handling.

Refrigerator cars have a much larger tare weight than ordinary box cars or gondolas, average tare weight of refrigerators being 26.76 tons with a range of from 23 to 30 [fol. 4708] tons, while the average tare weight of box cars is about 22 tons, with a range of from 18 to 25 tons.

On the other hand, total products of mines is shown on page 12 of Witness Donnell's Exhibit No. 93 as constituting slightly over 57 per cent of the tonnage originating in Florida in 1940, and of the commodities therein phosphate rock, gravel and sand, and broken, ground or crushed stone account for slightly over 55 per cent of the total tonnage originated. The average loading of these commodities is around 54 tons per car.

In cars originated, therefore, the ratio of total products of agriculture to the total products of mines will not be in the relationship to the tonnage which is shown in Mr. Donnell's Exhibit No. 93 as being 8.1485 for the products of agriculture and 57.388 for the products of mines, which is about as 1 to 7, but rather will be, on the cars originated basis, more nearly as 1 to 2½. If, indeed, the dead weight tonnage be taken into consideration, this ratio would be brought down to more nearly as 1 to 2.

On page 8 of my exhibit I have shown the number of cars and tons handled by the Atlantic Coast Line Railroad during the year 1941 for citrus fruit, vegetables, sand, gravel, crushed stone and phosphate rock, and the average carloading of each, which bear out the statement last made.

Witness Donnell testified that the preponderance of trunk transport into and out of Florida is privately owned and

[fol. 4709] operated. Our investigation shows that *that* statement to be correct. I do wish to say a few words about the competition which the railroads serving Florida meet from the private truckers. There is no regulation of the charges which may be assessed by truckers who handle only farm products, or who handle their own goods in their own trucks. This fact encourages itinerant hucksters to purchase fruits or vegetables in Florida for hauling to points in practically every state east of the Rocky Mountains.

There are no figures available showing the traffic handled to and from Florida by truck. Witness Doss has already testified that, so far as we have figures that *we* will be helpful, they show that, comparing the year 1928 with that of 1941, the loss of less than carload freight to other modes of transportation to and from Florida has been less relatively than for other states served by the Atlantic Coast Line Railroad and Seaboard Air Line Railway.

We do have some figures showing the amount of fruits and vegetables trucked from Florida as ascertained by Road Guard Inspectors of the Florida Department of Agriculture, and reported in Florida State Marketing Bureau's Annual Fruit and Vegetable Report, 1941-42 Season.

This report covers the period October 16, 1941, to May 10, 1942. It was obtained by stationed observers at the various points on highways near the Florida-Georgia state [fol. 4710] line who recorded the movements. It is not claimed that these statistics included every motor vehicle transporting fruits or vegetables out of Florida, but the figures do include the large majority of such traffic.

On pages 9 through 12 of my exhibit I have reproduced figures taken from the publication mentioned which show the large tonnage of fruits and vegetables handled by trucks to states north of Florida. For the period named it totaled the equivalent of 31,961 carloads or 305,837 tons.

Of course, these nonregulated truckers handling the perishables from Florida seek and obtain return loads. When they can do so, they pick up return loads of farm products, and when they cannot obtain return loads of farm products they will purchase loads of other commodities to sell in Florida or on the way back.

The railroads have made reductions under the rates prescribed by the Commission as maximum reasonable rates on citrus fruit and vegetables from Florida to all points in Southern and Official territories. They have also made

reductions on some commodities on which the competition of these unregulated truckers is most keenly felt and on which it has seemed that such reduction would return an appreciable amount of the traffic to rail handling.

I would mention particularly reduction in Florida to meet this kind of competition which have been made on [fol. 4711] cottonseed or peanut oil cake meal, and on pea-vine or peanut vine hay, corn meal and certain other grain products from the central and southern portions of Georgia, southeastern Alabama and southeastern Carolinas, and on onions from Official territory.

We have some record of the onion movement from Central Freight Association territory. For the period September 23, 1940 through April 14, 1941, there was no rail shipment of onions from Central Freight Association territory to Florida, although the truck competitive rates were in effect.

For the period December 17, 1940 through April 14, 1941, there moved by truck from Central Freight Association territory to south Florida the equivalent of 88 rail carloads of onions. For the same periods the movement to Georgia was 42 cars via rail and the equivalent of 71 cars by truck; to South Carolina, 28 cars via rail and the equivalent of 2 cars by truck, and to Tennessee 47 cars via rail, and the equivalent of 17 cars by truck.

These figures bear out what we have all along found to be true: That these unregulated truckers will handle the return loads to Florida for very little over out of pocket expenses for gas and oil rather than to return to Florida empty, and they are, of course, limited to handling on the return trips farm products or commodities which they have actually purchased. The railroads find it practically impos- [fol. 4712] sible to establish rates to meet this kind of competition.

Witness Grady, in his Exhibit No. 95, and testimony, refers to the very large tonnage which moves to and from Florida by water, and both he and Witness Donnell assert that the rail tonnage for Florida would have been much larger had not the higher rail rates within, to and from Florida, including the Florida arbitraries, diverted so much tonnage to the water and truck lines.

I would mention that Witness Donnell, at page 1882 of his testimony (page 16 of his mimeographed statement), refers to Witness' Grady's exhibit as showing that in 1939 more than 13,000,000 tons of Florida domestic freight ton-

nage moved via water. Pages G-8 through G-14 of Witness Grady's Exhibit No. 95 shows the figures to be 11,267,368 t tons.

I have, on pages 13, 14 and 15 of my exhibit, restated the export figures, and on pages 16, 17 and 18, have restated the import figures through the Florida ports, including Key West, which is not served by a rail line, and excluding the car ferry tonnage through Port Everglades, so as to show by specific commodities the tonnage exported or imported through those ports and the percentage of such commodities to total exported or imported.

I have also indicated on these pages of my exhibit those commodities which generally stop at the ports of importation or originate at the port of exportation, and, as to those [fol. 4713] which a rail or truck haul to or from interior Florida points, the character of rail rates on such commodities.

I called attention to the showing on page 13 that phosphate rock accounted for slightly over 62 per cent of the total exports through Florida ports in 1939. Note 1 is referred to opposite phosphate rock, and by explanation of that note on page 15, it will be noted that this commodity is handled to the ports under commodity rates which bear no relationship to class rates and contain no Florida arbitraries.

In point of tonnage exported, lumber is the next highest on the list, accounting for slightly over 11.5 per cent of the total, and under Note 2, it is shown that lumber handled via rail into Florida ports is under commodity rates bearing no relation to class rates and including no Florida arbitraries.

Other commodities shown on pages 13 and 14 which, when handled via rail to the Florida parts for export, move on commodity rates having no relation to class rates and which do not include any Florida arbitraries are logs, bunker coal, coal other than bunker coal, naval stores, cotton and fertilizer and fertilizer materials.

The fuel oil shown reaches the port by water from points outside the State of Florida. Pulpboard and other paper articles are produced at the points shown as being the ports of export as are crushed oyster shells.

Nearly all of the canned goods shown were exported [fol. 4714] through Tampa. Canned goods are produced in large volume at Tampa, but, if moved from the interior

Florida to Tampa via rail, they are on basis of commodity rates bearing no relation to class rates and not including Florida arbitraries.

Scrap iron and steel move on low commodity rates bearing no relation to class rates and all of the exports shown might and probably did originate at the port itself. If the tonnage of this commodity shown originated at points in north Florida, or at points north of the State of Florida, there was no Florida arbitrary included in so far as the movement to Panama City, Pensacola and Jacksonville were concerned, and the movement to those points were nearly 64 per cent of the total for this commodity to all of the Florida ports. The starch exported through Panama City could not have originated in Florida as starch is not manufactured in that state. Panama City is not within Florida Arbitrary territory.

Of the cement exported 96 per cent was through the port of Tampa, and the cement plant at Tampa would account for that movement. If there were rail movement of the cement moving through the other ports shown it was on commodity rates bearing no relationship to the class rates.

This leaves only the items of fresh fruit and all commodities not otherwise named, aggregating 2.43 per cent of the total.

97.57 per cent of the total shown is either produced at [fol. 4715] the ports and as to which the rail lines would have no opportunity to obtain a haul when for export or, if handled to the ports via rail, would be on the basis of special commodity rates bearing no relation to class rates and containing no Florida arbitrary. This does not mean that the remaining 2.43 per cent would move on basis of class rates or would contain an arbitrary.

For example, of the 18,802 tons of commodities, not otherwise named, shown as being exported through Miami, some of the items which originate at Miami include, as shown on page G-33 of Witness Grady's Exhibit No. 95, 7,706 tons of boiler water, 2178 tons of drinking water, 1,110 tons of ice, 160 tons of feed and 90 tons of beer. That is nearly 60 per cent of the miscellaneous commodities shown as exported through Miami.

Likewise, to Miami, one of the larger unspecified items consisted of 1,171 tons of automobiles and parts. There are specific commodity rates on automobiles and parts from

Central Freight Association producing points to Miami which bear no relation to the class rates and do not include a Florida arbitrary, but, if these automobiles and parts moved from Central Freight Association points directly to Miami billed for export, they would have moved on class rates which are governed by Official Classification and are related to the export rates from such origins to New Orleans, Louisiana, the latter in turn being related to the rates from [fol. 4716] Central Freight Association origins to New York, N. Y., and Baltimore, Maryland.

The movement of commodities not otherwise named to Panama City, Jacksonville and Pensacola, for export, when from origins north of the Florida peninsula, would not be subject to the Florida arbitrary even if they moved on full class rates. Class and commodity rates are published from Central and Illinois Freight Association territories to Jacksonville, Pensacola and Panama City for export, which are made with relation to the rates from such origins to New Orleans, Louisiana; Baltimore, Maryland, and New York, N. Y., for export, such export class rates being governed by Official Classification, and, of course, none of them including a Florida arbitrary.

A careful analysis shows that less than 5 per cent, and probably less than 1 per cent of the commodities shown as being exported through the Florida ports, when moving via rail, would move on class rates or would include a Florida arbitrary.

Pages 16, 17 and 18 of my exhibit, covering the imports through the Florida ports, show very nearly the same sort of picture as I have just mentioned regarding the exports. Over 33 per cent of the imports is of fertilizer and fertilizer materials, which, when moving inland by rail, move on commodity rates bearing no relation to class rates and contain no Florida arbitrary.

Suffice it to say that a study of this exhibit will disclose slightly over 88 per cent accounted for as traffic which re- [fol. 4717] mains at the port of import, or, if moving via rail to interior points, moves on commodity rates bearing no relation to class rates, and containing no Florida arbitrary. This does not mean that nearly 12 per cent does move on class rates or on rates containing a Florida arbitrary.

To illustrate, of the creosote oil which is imported through Pensacola none is likely to move to a Florida peninsula Point, and that imported through Jacksonville

would be used principally at Jacksonville or shipped via rail to other points at which creosoting plants are located, only one of which is in Florida peninsula territory, and the Florida arbitrary on creosote oil from Jacksonville to that point is only 1 per cent per 100 pounds.

The beet pulp imported through Jacksonville, Miami and Tampa would nearly all remain at those ports. Much of the tonnage included under the heading "other commodities" would be used at the port.

For example, at Tampa among the items included under this head are 1,617 tons of tobacco, 1,072 tons of iron and steel articles. Much of the miscellaneous imports shown through Jacksonville would, if shipped out, find their destination at points north of Florida, and would move on commodity rates bearing no relation to class rates or perhaps to Central or Illinois Freight Association territories on class rates which are governed by Official Classification and are [fol. 4718] made with relation to the import class rates from New Orleans, Louisiana; Baltimore, Maryland, and New York, N. Y.

I have not included in these statements dealing with the distribution and rate adjustment on the exports and imports through Florida ports the Key West figures because that port is not served by a rail line; nor have I included the figures via Port Everglades on traffic moving via the Florida East Coast car ferry because class and commodity rates having no relation to the Docket 13494 class rates, and containing no arbitrary have been established for the movement of practically all of the traffic which is handled through Port Everglades in connection with the car ferry.

So far as concerns the coastwise and intercoastal movements from, to or through the Florida ports, we have no figures segregating the commodities so handled. It is obvious that the outbound movement from or through the ports in coastwise or intercoastal traffic will follow closely the same pattern as that for export traffic with the possible exception that pulpboard and other paper articles, naval stores and canned goods would show a slightly higher percentage of total movement, and lumber and scrap iron would show a lesser percentage of the total movement than is the case for export.

As to the inbound coastwise or intercoastal movement, the showing would be very different from that for the imports, because there is regular service, during normal times,

[fol. 4719] between Florida ports and the eastern port cities, and frequent though irregular service between the larger Florida ports and the Pacific Coast. Also during normal times there are both regular and irregular steamship or barge services between certain of the Florida and Gulf ports.

The rates assessed by the water carriers between ports are generally so low that the railroads cannot meet them.

On pages 19, 20, 21 and 22 of my exhibit, I have shown the class rates applicable via all-water routes between eastern port cities and Jacksonville, Miami and Tampa, Florida, and have compared therewith the present all-rail rates and what the all rail rates would be if made on basis of the Southern class rate scale or the Official territory class rate scale, and have also shown, at the bottom of the pages showing the class rates, representative commodity rates published by the steamship lines and the Classification or exception sheet rating governing all-rail traffic.

As illustrative of the showing in these pages, not- the situation between Jacksonville, Florida, and New York, N. Y., shown on lines 9 through 13 on page 19. The first class all-water rate is shown to be 146 cents, the all-rail rate to be 220 cents, the rate on the Southern or Docket 13494 K-2 scale 245 cents and the rate on the Official Territory or Docket 15879 Appendix E scale to be 179 cents.

The first class all-water rate is lower by 33 cents per [fol. 4720] 100 pounds than the Official territory level, and the present all-rail first class rate is 25 cents per 100 pounds lower than the Southern level, no Florida arbitraries being here considered.

At the bottom of that page, note, for example, at line 33, the steamer lines publish northbound rate of 34 cents per 100 pounds on canned goods, carload. The exception sheet rating for this commodity on all-rail is Class 30-K, which represents eighth class to reflect 5 per cent increase under Ex Parte 123. Class 30-K applied against the all-water first class rate from Jacksonville, Florida, to New York, N. Y. would be 42 cents, the northbound commodity rate being, therefore, 8 cents lower than the all-water class rate.

The exception sheet rating in Official territory on canned goods, carload, in Class 32-S, which represents 32 per cent of the first class rate prior to Ex Parte 123 increase, increased 5 per cent, but not exceeding an increase of 2 cents per 100 pounds. The Class 32-S figure under the Official

territory level of rates for all-rail distance would be 54 cents per 100 pounds or 20 cents per 100 pounds higher than the all-water rate from Jacksonville, Florida, to New York, N. Y. on canned goods.

The showing here mentioned as between Jacksonville, Florida, and New York, N. Y. will apply in greater or lesser degree to the balance of the figures shown on these three pages.

[fol. 4721] The steamer lines publish several pages of commodity rates, most of them considerably lower than would result from their already low line of class rates.

The situation as to rail-water rates and movements from points in Official territory to Florida ports from interior Florida points to eastern ports via rail-water, from eastern parts to interior Florida points via water and rail, or from the Florida ports to interior Official territory points via water and rail is very much the same as that via the all-water routes between the ports, in that the through rates via the rail-water or water-rail routes, whether published as one-factor through rates or obtained by combination over the ports, are generally too low to permit the all-rail routes to meet them.

I would cite here the handling before the Commission in Fourth Section Application 13819, commodity rates to South Atlantic and Florida ports, reported in 186 ICC 675, 197 ICC 309, 214 ICC 7 and 222 ICC 427. There, the rail lines sought authority to meet the rates available on combination for the rail-water service through the North Atlantic ports on commodities from Central and Illinois Freight Association points to the South Atlantic and Florida ports. The Commission did not grant the relief sought, but did grant Fourth Section relief to establish all-rail rates made 10 per cent higher than the combination available via the rail-water routes.

[fol. 4722] Commodity rates were established pursuant to the relief granted on a rather long list of commodities, but the result of the establishment of such rates has been most disappointing to the South Atlantic and Florida port lines. We have kept records of all movements under the rates so established, and except to Miami, the rail routes have recaptured only a small portion of the movement for which such rates were intended.

At pages 4 through 10 of Witness Donnell's Exhibit 93 are shown graphs and figures comparing tonnage originated

or terminated in Florida with the figures for certain other states. He does not, on these pages, show the comparisons of Florida with all of the other states, in some instances omitting comparisons of Florida with some of the other Southern states.

In order to have a complete picture as to the tonnage originated and terminated in all of the states, and the tons per mile originated and terminated in all of the states, I have shown at pages 22 and 24 of my Exhibit No. 202 such a comparison. The only comment which it seems necessary to make here is that the tons originated or terminated per mile of road within the state have much more meaning than the tons originated or terminated per state.

For example, where on page 4 of Exhibit No. 93 it is shown that Florida originated 15 per cent more rail tonnage than did New Jersey in the year 1940, the salient fact [fol. 4723] is that, as shown on page 22 of my exhibit, New Jersey originate 115 per cent more rail tonnage per mile of road in 1940 than did Florida.

The real test, however, of traffic density is the tons handled per mile of road, and I have, at pages 8, 9, 10 and 13 of my prior exhibit No. 70 shown such comparisons for many years of the tonnage handled in Florida with tonnage handled in the other states served by the Atlantic Coast Line Railroad and Seaboard Air Line Railway.

While at pages 23 and 24 of my exhibit the showing as to tons originated and terminated in Florida indicate a rather high rank for Florida as compared with the other Southern states, the reverse is true when total tonnage handled is taken into consideration.

Witness Donnell in answer to questions on cross-examination at page 1892 of the transcript, stated that there is very little overhead traffic in Florida but its traffic originating and terminating traffic builds up the density of the traffic in the Carolinas, Virginia and Georgia, and again, at page 1894 of the transcript, he stated, "North Carolina will always, a million years from now, have more density than Florida because the more tonnage we originate, the heavier density North Carolina's density becomes."

Admitting that the fruit and vegetable tonnage originating in Florida contributes valuably to the overhead traffic [fol. 4724] handled through other Southern states, and that, in normal times, from 10 to 15 per cent of the phosphate rock originating in Florida contributes to the tonnage han-

dled through other Southern states, I would like to show that a great portion of the tonnage originating in Florida terminates in Florida, and, therefore, by far the greater part of the tonnage originated in Florida does not contribute to the tonnage handled in the other Southern states.

On page 25 of my exhibit I have shown for commodities the tons originated and tons terminated in Florida for the year 1940. These figures show that the tonnage originated corresponded to a marked degree with the tons terminated in Florida.

I have already shown that, as to phosphate rock, the total amount originating in Florida and which moved to other than are known to be Florida destinations, the percentage via the Atlantic Coast Line Railroad in 1939 was 10.75 per cent and in 1940, 14.05 per cent. There are interior Florida fertilizer mixing plants to which there is a movement of phosphate rock from Florida origins and that movement would be included in the 10.75 per cent or 14.05 per cent.

As to lumber, I have recently participated in hearings before the Florida Railroad Commission concerning the intrastate rates on lumber and related articles within Florida, and am in position to say that, by far the greater portion [fol. 4725] of that tonnage originating in Florida terminates in Florida.

On petroleum and its products nearly all that is used in Florida comes by water to the Florida ports and is either used at the port or distributed inland from those ports.

Most of the fertilizer used in Florida is produced in Florida.

Of the other commodities shown on this page, it is obvious that from the very nature of the commodities they can move only for short distances. It is shown that these ten commodities accounted for slightly over 80 per cent of the tonnage originated in Florida and slightly over 75 per cent of the traffic terminated in Florida. This enormous tonnage originating in Florida and terminating in Florida adds very little to the traffic handled through or originating or terminating in the other Southern states.

On this point I think it well to mention that the rates on these commodities within, to or from Florida are commodity rates, exceedingly low in level, and that no Florida arbitrary is to be found in the rates on which any of these ten commodities move; except on gravel, sand, and broken,

crushed or ground stone, and the arbitraries on these commodities are so low it is almost impossible to find them.

As showing the low earnings on sand, gravel, crushed stone and phosphate rock for the tons handled in Florida, attention is called to page 26 of my exhibit, which shows [fol. 4726] such information for the Atlantic Coast Line Railroad, and the Seaboard Air Line Railway for the year 1940, and in comparison similar figures for the Louisville and Nashville Railroad and for the Southern Region as a whole. The average revenue for the Atlantic Coast Line and Seaboard Air Line in Florida on these commodities is shown to be 71.4 cents per net ton which is less than 6 per cent of the first class rate for a forty mile haul under the Docket 13494 K-2 scale prior to Ex Parte 148 increase without a Florida arbitrary.

At pages 8 and 9 of Witness Donnell's Exhibit No. 93, he makes comparison of the freight originated and terminated in Florida for the year 1940 in Florida with similar figures for the New England States. Further comparison of Florida with the New England States is interesting and perhaps helpful because there are many characteristics, both from the standpoint of geography and railroad statistics, which in the two areas are comparable.

I have set down some of these as well as some points of difference on page 27 of my exhibit. Florida and the New England States are very nearly equal in land area, in miles of railroads, in square miles of land area to miles of railroad and in tonnage originated. However, in tonnage terminated and in total tonnage originated and terminated there is a marked difference as will be seen from page 27 of the exhibit. While Florida in 1940 originated 7.3 per cent more rail tonnage than did New England, New Eng- [fol. 4727] land terminated 125.3 per cent greater rail tonnage than did Florida, and, for combined originated and terminated tonnage, New England had 59.1 per cent more than Florida.

Two other points of peculiar similarity are found as between Florida and New England. Florida, being a peninsular state, the most southeastern state in the Union, has very little opportunity to have its traffic density increased by reason of overhead traffic. New England, being at the northeastern corner of the United States likewise has very little opportunity to have overhead traffic add to its traffic

density, though since it adjoins Canada the opportunity there is somewhat greater.

Again, in New England as in Florida we find a portion of the area is subject, as to freight rates, to arbitraries over and above the level generally existing in the territory with which each area is grouped. In Florida there are 44 counties which lie wholly in the arbitrary territory, and these counties have a land area of 38,224 square miles. In the states of Maine, New Hampshire and Vermont, there are thirty counties lying wholly within the arbitrary territory, having a land area of 41,560 square miles.

At pages 1871 and 1872 of the transcript, Witness Donnell refers to the great increase in the total tons of revenue freight carried in the state of Florida in the year 1940 over [fol. 4728] that in the year 1921, the figures showing that increase to be 112 per cent.

The decision of the Interstate Commerce Commission in Docket 13494, as regards the rates to and from south Florida and the arbitraries which might be added to the basic rates, was not determined on basis of the 1921 traffic sho-ing. Rather, at page 622 of its decision in Docket 13494, 100 ICC 513, it makes comparison of the traffic density of Florida with other Southern states for the years 1922 and 1923.

I have shown at page 28 of my exhibit for account of the Atlantic Coast Line Railroad, and at page 29 for account of the Seaboard Air Line Railway, the comparison of revenue tons carried, average miles of road operated, and revenue tons carried per mile of road, in the six Southern states through which those roads operate, for the years 1922, 1923, 1924, 1925 and 1940. These figures show that the Atlantic Coast Line Railroad handled in 1940 less revenue tons per mile of road in Florida and in the other states than it handled in 1923, 1924 or 1925, except as to Alabama. The Seaboard Air Line Railway in 1940 handled per mile of road in Florida in 1940 less than it did in 1924 or 1925, and only 24 tons more per mile of road in 1940 than it did in 1923.

I have included in these two pages the figures for the years 1924 and 1925 because whether or not the Commission made reference to the figures for those years in its final [fol. 4729] decision dealing with the arbitraries in connection with the Florida rates under Docket 13494, it had those

figures available at the time of its decision reported at 128 ICC 567, which was decided July 19, 1927.

Pages 8, 9 and 10 of my prior Exhibit No. 70 show the figures for the Atlantic Coast Line Railroad for the intervening years 1926 through 1939, and page 13 of my exhibit No. 70 shows for account of the Seaboard Air Line Railway the figures for the years 1929 through 1939.

In Exhibit No. 93, Witness Donnell refers to the low number of railroad employees per mile of road in Florida as compared with 38 other states. Aside from the obvious fact that this showing is indicative of lighter traffic density I would point out that his figures are based on first, main track, rather than miles of road, and are for the month of July, 1940.

The number of employees is affected, particularly as to maintenance of way employees, by the second, third and fourth main tracks and it will be seen from page 2 of his Exhibit No. 93 that the states having the greatest number of employees per mile of road are those states in which the greatest amount of second, third or fourth main line tracks are maintained.

July is one of the three lightest months, from the standpoint of traffic handled into or out of Florida. As shown [fol. 4730] by page 7 of my exhibit, for the year 1939, July was the third to the lightest month and in 1940 second to the lightest month in tonnage handled over the Atlantic Coast Line Railroad, excluding phosphate rock. There can be no doubt that a somewhat different showing would have been made had his figures been for one of the months during the first or last quarters of the year.

I would also call attention to the fact that the number of railroad employees in any state will be influenced materially by the location therein of general offices of Class I railroads. In Florida only one Class I railroad has its general offices, namely, the Florida East Coast Railway. In Georgia there are located the general offices of the Central of Georgia, Atlantic, Birmingham & Coast Railroad, Georgia Railroad-West Point Route, Charleston & Western Carolina Railway, Georgia and Florida Railroad, and a large portion of the general offices of the Southern Railway.

It will be noted that the number of employees in South Carolina, per mile of line, is not shown in the exhibit, this

being one of the states which had fewer employees per mile of road in July, 1940, than did Florida. The general offices of no Class I railroad are located in South Carolina.

In North Carolina, which is well down the list, are the general offices of the Atlantic Coast Line Railroad.

In Alabama, also well down the list, are the general [fol. 4731] offices of the Gulf Mobile & Ohio Railroad, and the Alabama, Tennessee and Northern Railway.

In Virginia, which is high up on the list, are to be found the general offices of the Norfolk & Western Railway, Seaboard Air Line Railway, Virginia Railway, Norfolk Southern Railway, and Richmond, Fredericksburg & Potomac Railroad.

In Maryland, which heads the list, and which, being a small state in area, has a much smaller total amount of first main line track than most of the other states shown, will be found the general offices of the Baltimore & Ohio Railroad, and Western Maryland Railway.

At page 3 of Exhibit No. 93, Witness Donnell shows the relatively small railway tax accruals per mile of line owned in Florida as compared with 45 other states. On this point the tax accruals compared with revenue earned is of equal value, and I have shown such information at page 30 of my Exhibit No. 202.

On page 4 of Exhibit No. 94, Witness Donnell shows that, from eight origins in the Florida pebble rock district to Tampa, Florida, the rate on phosphate rock for export, prior to Ex Parte 148, was 75 cents per gross ton and that the weighted average haul is 32 miles, his figures being quoted from 243 ICC 544.

He failed, however, to show that the rate of 75 cents per gross ton is also applicable to Port Tampa, for export, [fol. 4732] and that at the same page in the Commission's report it is show- that the weighted average haul to Port Tampa is 50.7 miles; likewise he failed to show that at the same page of that report it is shown that the same rate of 75 cents per gross ton mile applies to Tampa and Port Tampa when for coastwise movement beyond and that the weighted average haul when for coastwise movement is to Tampa 37 miles, and to Port Tampa 52.4 miles.

Again I call attention to the fact that in this decision, 243 ICC at page 541, it is shown that in 1936 the phosphate

rock moving through Tampa and Port Tampa was handled for a weighted average distance of 44.8 miles, and in 1937 for a weighted average distance of 43.7 miles. As a matter of fact, the rate of 75 cents per gross ton applies also to South Boca Grande, for export or coastwise movement, from origins on the Seaboard Air Line Railway, the distances to South Boca Grande ranging from 94 to 110 miles.

It is shown at page 541 of the Commission's report referred to that in arriving at the weighted average distance to Tampa and Port Tampa, it was assumed that all the shipments which had moved for the greater distance to South Boca Grande had instead moved to Tampa. The report referred to is Docket 27723, Phosphate Export Association, et al. v. Atlantic Coast Line R. R. Company, et al., which attacked rates from these Florida origins to only Tampa and Port Tampa, when for water movement be-
[fol. 4733] yond.

The following is quoted from that decision, beginning at the bottom of page 536:

> "We have given the evidence before us careful thought, and even though the South Boca Grande situation and the wet rock movement be eliminated from consideration, the record is not convincing that the assailed rates and charges exceed the maximum limit of reasonableness."

Another witness will deal generally with the testimony and Exhibit No. 92 introduced by Witness Maurer. On pages 104 through 112 of that exhibit, and also dealt with by Witness Eutsler, reference is made to rates on a few manufactured commodities from specific origins, many of which are local to the Atlantic Coast Line Railroad, and I do wish to have something to say about these.

On pages 105 and 107 of Witness Maurer's Exhibit No. 92 there are shown rates on palmetto brush fibre, less carload, and on fibre brushes, less carload, from Jacksonville, Otter Creek and Benson Junction, Florida, to Chicago, Illinois, and three Central Freight Association points, as compared with rates on the Docket 15879 level. A careful search of our files indicates that at no time have shippers' organizations nor manufacturers of palmetto fibre or fibre brushes located at any of these three Florida origins ap-
[fol. 4734] proached us about rates.

In so far as concerns the Otter Creek adjustment, there is nothing regarding that in our files, although Otter Creek is a local station on the Atlantic Coast Line Railroad.

The Jacksonville operation first came to our attention in 1939 when our Jacksonville representative advised us that a firm was considering putting up a plant of this kind at Jacksonville, that report indicating that the prospect had not approached the railroads, but had approached a steamer line for establishment of a rate to New York City.

We figured closely on a rate that we might be able to establish which would result in rail handling of this movement but gave up when we found that the Clyde-Mallory Line published a rate of 35 cents at minimum weight of 20,000 pounds, and a rate of 47 cents on less than carloads.

The short line distance from Jacksonville to New York is 967 miles, and the minimum per car revenue at 35 cents per 100 pounds, minimum 20,000 pounds, would be only $70, yielding slightly under 7¼ cents per car mile for the shortest physical distance. It would take a rate of 53 cents per 100 pounds to yield, for the short physical district, per car mile revenue of 12 cents, and the Commission has several times denied Fourth Section relief, regardless of the degree of circuity, for rates yielding less than 12 cents per car mile. We have not at any time been approached by — ship-[fol. 4735] pers organization nor by the manufacturer of palmetto fibre or fibre brushes at Jacksonville, with regard to freight rates.

Benson Junction, another point at which these commodities are made, is a point reached by both the Atlantic Coast Line Railroad, and the Florida East Coast Railway. At no time have we been approached, by the shipper or a shippers' organization, to adjust the rates on these commodities from that origin. Our agent at Benson Junction did take up with us on two occasions, asking us to look into the question of rates to see if we could establish such rates as would divert to rail handling the traffic which then was moving principally by truck or truck and water service.

On both occasions we approached the shippers to ascertain what rates would be necessary to divert the traffic to rail handling, but were unable to obtain such information. One one occasion, however, we were informed that, even if the rail lines met exactly the rates available by truck and water, the rail lines would not be given the business.

Later, at our request, the shippers advised us that they would give us information as to movements and destinations so that we could make a further attempt to progress the matter, but we were never furnished such figures.

At page 108 of Witness Maurer's Exhibit No. 92 he shows rates on candied, crystallized or galazed citrus fruit from Davenport, Florida, to representative Southern points. He [fol. 4736] overlooked that effective in May, 1942, the rating on this commodity within the South, and between the South and Official territory was reduced to Class 57.

I have reproduced page 108 of Exhibit No. 92, and have added thereto figures on the Class 57 basis, this being shown at page 31 of my exhibit. I call attention to the fact that the reductions made in May, 1942, amount to very considerably more than the Florida arbitrary which was included in the rates prior to that time. I have been unable to find where we have ever been approached by a shipper or a shippers' organization for an adjustment in the rates on candied, crystallized, or glazed citrus fruits from Florida points to the South or to Official territory.

Witness Maurer, at page 110 of his exhibit, makes comparison of the rates on furniture, carload, minimum weight 10,000 pounds, from Palatka, and Tampa, Florida, to four representative destinations in Central-Illinois Freight Association territory with rates if made on the Docket 15879 level and with rates from Gardner, Massachusetts.

Witness Eutsler refered to this commodity as being shipped from Tampa and Palatka, Florida, at pages 1949 through 1953 of the transcript. At page 1952 he states that the concern manufacturing furniture at Palatka, Florida, originally manufactured cypress lawn and garden furniture, but that the all-rail rates were so high that when added [fol. 4737] to the cost of the furniture its products were excluded from the interior portions of the country, and that early in 1930 it turned to its present line of solid wooden bedroom and dining room furniture.

We were approached by the manufacturer at Palatka for an adjustment in the rates on lawn and garden furniture to points in Official territory. That was just about the time that both the Official territory and southern roads were looking *in to* the question of rates on furniture necessary to meet truck competition, which resulted in the establishment, effective in September, 1932, of Class 58, at minimum weight of 10,00 pounds, within the South and from the South to the

North. The Official territory roads, also in an effort to meet truck competition, reduced their ratings to 70 per cent of first class. These are the ratings which are still applicable on furniture at minimum weight of 10,000 pounds, as is seen from Witness Maurer's Exhibit No. 92, page 110. The same ratings apply on wooden garden or lawn furniture as on bedroom or dining room furniture.

Attention is called to the showing on page 110 of Exhibit No. 92 that by reason of the rating of 58 per cent of first class from the South, and 70 per cent of first class in Official territory, the rates from the Florida points to Central Freight Association points exceed the Central Freight Territory level by amounts ranging from only 20 [fol. 4738] per cent to 24 per cent.

To Trunk Line territory, where the class rates are on the key point basis, the excess over the Official territory scale is much less, as for example it can be readily figured from page 21 of my exhibit that from Tampa, Florida, to New York, N. Y., the excess over the Official territory scale is less than 14 per cent.

Attention is called to the fact that the rates on wooden garden or lawn furniture are the same as on other wooden furniture and, therefore, the conclusion is inescapable that it was not the rates which caused the manufacturer at Palatka to switch from making of garden or lawn furniture to the making of bedroom or dining room furniture.

I cannot locate where we have ever been approached by the manufacturer of furniture at Tampa or by a shippers' association for an adjustment in the rates from that point. However, when the truck competitive rates on furniture were established from Southern points it included the rates from Tampa as well as from other Southern points.

At page M-112 of Witness Maurer's Exhibit No. 92, he shows the rates on cigars, less carload, from Jacksonville and Tampa, Florida, to five Central-Illinois Freight Association destinations, as compared with rates from New York and with the Docket 15879 scale of rates.

Dealing first with the rates from Tampa, I would mention [fol. 4739] that in so far as the East is concerned, the movement has been practically all by all-water route or via rail to Jacksonville thence water beyond, until cessation of water service by reason of war conditions.

As is shown at page 21 of my exhibit, the all-water first and second class rates from Tampa to the Eastern port

cities are on an extremely low level as compared with any existing level of all-rail rates, the first class rates via all-water to Boston and New York being respectively 26 cents and 7 cents per 100 pounds lower than the Docket 15879 Appendix E first class scale, and to Philadelphia and Baltimore the rates being only 4 cents and 15 cents, respectively, higher than the Docket 15879 Appendix E first class scale.

Commodity rates much lower than the class rates are, however, published via the all-water routes as, for example, rate of 110 cents per hundred pounds from Tampa to Baltimore, Maryland, and Philadelphia, Pennsylvania, is published in Item 1100 of Bull Steamship Lines' Tariff BL-20-E., U.S.M.C. No. 84, and there is published in Item 3180 of Pan-Atlantic Steamship Corporation ICC No. 84, rates of 110 cents per 100 pounds to New York, N. Y., Philadelphia, Pennsylvania, Hoboken and Camden, N. J., and rate of 114 cents per 100 pounds to Boston and New Bedford, Mass. These all-water commodity rates range from 42 cents to 78 cents lower than second class rates under the Docket 15879 Appendix E for the rail distance from [fol. 4740] Tampa to the Eastern ports. We would not meet rates such as these via all-rail routes, but we did establish commodity rate of 134 cents per 100 pounds for application via rail to Jacksonville, thence water lines beyond to New York and some of the other Eastern ports on which, account of the quicker service, the rail lines did handle a fairly good portion of that traffic.

From Tampa to Central-Illinois Freight Association territory, truck competition began to be noticed about 1932 or 1933, and we have been much concerned since that time with the recapture of this tonnage, keeping closely in touch with the volume of tonnage moving both by rail and by truck. Chicago, is, of course, the principal destination point in Central-Illinois Freight Association territory.

After extended negotiations we established, effective January 12, 1937, a less carload rate of 220 cents from Tampa to Chicago, this rate becoming 242 cents per 100 pounds on March 28, 1938, with the increases under Ex Parte 123. It was understood at the time that the rate of 242 cents would meet the truck competition.

For about five months after that rate was established there was a decided pick-up in the rail movement to Chicago, although even then more than 80 per cent continued to move

by truck, and, afterwards, the rail movement fell off to practically nothing. I show here the figures we obtained [fol. 4741] as to total rail movement and total truck movement from Tampa to Chicago for various periods:

April, 1935, through July, 1935, rail, 3,627 pounds; truck, 257,500 pounds.

August, 1936, through December, 1937, rail, 6,654 pounds; truck, 366,200 pounds.

January, 1937, through May, 1937, rail, 49,968 pounds; truck, 288,300 pounds.

June, 1937, through October, 1937, rail, 14,064 pounds; truck, 319,200 pounds.

November, 1937, through March, 1938, rail, 1,105 pounds; truck, 346,400 pounds.

August, 1937, through July, 1939, rail, 24,072 pounds; truck, 1,550,800 pounds.

It will be seen from the above figures that establishment of the lower rate to Chicago did not have the result which was expected in returning the traffic to rail handling. There was another unexpected result in that the rate to Chicago had been published subject to the intermediate rate rule without adequate restrictive routing, and it was found that the reduced rate to Chicago would, under the intermediate rate rule, apply to Kansas City, Missouri. The railroads did get the business to Kansas City, Missouri, until the truck lines met that rate.

Subsequently the rate to Chicago was restricted to not apply through Kansas City, and later it has been cancelled [fol. 4742] altogether, because it did not move any appreciable amount of traffic.

The Tampa railroads had several conferences with the Tampa manufacturers in an endeavor to work out rates which would bring back to the rail lines a fair share of this traffic. We are told, however, that as long as the trucks met the rail rates there was little chance of any appreciable amount of traffic moving via rail, not only to Chicago, but to other points in Central Illinois Freight Association territories due to the quicker service by trucks.

In a final effort to recapture some of this traffic, the rail lines established a carload rate of 161 cents per 100 pounds, subject to minimum weight of 30,000 pounds, effective September 30, 1939. It was thought that this carload rate coupled with the stopping in transit arrangements, would

enable the rail lines to recapture some of the tonnage, but it did not work out that way, and there was no movement on that rate.

Incidentally, the truck lines met the 161 cent rate as a volume rating, but they handled no traffic thereunder. The rate of 161 cents is lower by 17 cents per 100 pounds than the Official territory level.

We have not been approached by the manufacturers or by shippers' organization at Tampa for a readjustment of the rail rates on cigars to Southern or Official territories. All the negotiations with respect to rail rates have been [fol. 4743] initiated by the railroads.

Coming to the question of rates on cigars from Jacksonville, the situation here is very much as indicated with respect to the rates from Tampa. While water service to the East was available there was no way the railroads could meet the all-water rates. The all-water rate from Jacksonville to New York, proper, was 127 cents prior to June 1, 1942, as published in Item 1180 of Agent I. H. Hasker's ICC 262. That rate was cancelled effective June 1, 1940, leaving second class rate of 130 cents to apply. The Official territory level for the rail distance is, as shown by page 19 of my exhibit, 173 cents.

To New York, Philadelphia and Baltimore, the all-water rate, prior to June 1, 1942, was 109 cents per 100 pounds, as published in Item 1180 of Agent Hasker's ICC 262, this being increased to 120 cents in Item 1080 of Agent Hasker's ICC 275, effective June 1, 1942, as shown on page 19 of my exhibit. The second class rates under the Docket 15879 scale for all-rail distances are to New York 152 cents, Philadelphia 143 cents and Baltimore 136 cents.

Proportional rates applicable on movements beyond the Eastern ports to interior Eastern and Buffalo-Pittsburgh points are published by all water, these proportional rates being 76 cents to Boston and 68 cents to New York, Philadelphia and Baltimore, per Item 1180 of Agent Hasker's ICC 262, which were increased, effective June 1, 1942, in [fol. 4744] Item 1080 of Agent Hasker's ICC 275 to be 84 cents to Boston and 75 cents to New York, Philadelphia and Baltimore. Proportional rates are also published by all water from Jacksonville to the Eastern port cities when for movement beyond to points in Central Freight Association territory or west thereof, such proportional rates being published in Item 2845 of Agent Hasker's ICC 275, and being

to New York 60 cents, Philadelphia 67 cents and to Baltimore 68 cents per 100 pounds.

From Jacksonville to Central-Illinois Freight Association territories the movement has, as was the case from Tampa, been mostly by truck. In October, 1934, this situation came again to our attention and it was found that the truck lines had established to points in Central-Illinois Freight Association territories rates which were approximately the same as the combination of the proportional rates by water to Baltimore, plus the water-rail rates from Baltimore to Destination.

Based on prior experience, it was concluded that if rail carriers met such rates, the trucks would if necessary to control the handling of the traffic make further reductions, and therefore no changes *was* made in the rail rates.

I do not think it amiss to say that the principal manufacturer, almost the only one shipping cigars from Jacksonville, owns part or all of one of the truck lines operating from Jacksonville to Southern, Central Freight Association [fol. 4745] and Illinois Freight Association points, and advice we have received from our representatives on the ground has all along been that we cannot expect to obtain any appreciable movement to Central Freight Association or Illinois Freight Association territories as against the truck lines.

At page 1841 of the transcript, Witness Maurer mentions the manufacture of safety matches in cardboard strips at Jacksonville and infers that by reason of inability to obtain prompt relief in connection with its freight rates to Central territory, the plant was unable to exist and was closed.

We were approached there by the manufacturer to establish rates from Jacksonville to Chicago and Minneapolis particularly, as well as to other points in Central and Illinois Freight Association territory. We were advised that a rate of 80 cents would be necessary from Jacksonville to Chicago. A rate of 80 cents is 15 cents per 100 pounds less than the normal Official territory level of fourth class. The Official territory roads did find it necessary as a truck competitive measure to reduce the rates within that territory generally on matches, carload, to 40 per cent of first class and at that level the rate from Jacksonville to Chicago would be 76 cents.

The Southern railroads a year or so prior to this request also had occasion to consider the rates on matches, carloads, from a truck competive standpoint, and for that pur- [fol. 4746] pose had, by exception sheet rating, reduced the rating from fourth class to fifth class.

Later this exception sheet rating was cancelled and the classification itself changed to fifth class. I have previously explained that where truck competitive rates are found necessary in one territory, but not between that territory and another, it has not been the custom, nor has it been required by the Commission, to make similar reduction in the interterritorial rates.

Mr. Gwathmey: The witness is offered for cross-examination.

By Commr. Splawn:

Q. Before cross-examination, may I ask a question? What percentage of the rail traffic originating in Florida and destined to Florida then do you estimate is tied to the rails: not competitive with trucks and water?

A. Mr. Commissioner, there is none of it that is tied to the rails. We find that we sometimes are unable to make rates low to get logs, even. That is probably the lowest rated commodity you can find to move by rail. There is none of it that is tied to rail.

Now, wait a minute. I will take that back. Phosphate rock and sand and gravel, for all except short distances, probably move by rail. Phosphate rock and sand do not move much by truck.

Q. What is your theory about the differential down there? [fol. 4747] A. In those instances where we are able to retain the differential, we should be permitted to do so. If the ten years from 1930 to 1940 can be considered as anything like normal, we need every penny that we can get to keep a jump ahead of the sheriff; in fact, we incurred a deficit in those ten years. In those instances where we have found that it would get more business to the carrier, to the railroad, to waive the Florida arbitrary, we have usually done so.

Commr. Splawn: Thank you.

Cross-examination.

By Mr. Norman:

Q. I just have one or two questions about this comment on Mr. Cates' testimony. Did you understand Mr. Cates to say that his competition was with the pickle plants in C. F. A. territory and not Trunk Line territory?

A. Yes, sir.

Q. Then, why have you prepared the rates with Trunk Line territory instead of the rates that he really has to compete with?

A. For the reason he is located well east of the Buffalo-Pittsburgh territory, and the Official territory level, as I understand it, would be between two points in Official territory. Now, you can take different points in C. F. A. or you can take from Trunk Line to C. F. A., but you will still be within Official territory. The C. F. A. level is the truck competitive level.

[fol. 4748] Q. He has truck competitive rates now, too, doesn't he?

A. To South Florida, yes.

Q. Yes, to nearby points. And one of the fears he considered was that they might be taken away from him, and then he would not have any.

A. That is right.

Mr. Norman: That is all.

Commr. Aitchison: Anything further? You are excused.

(Witness excused.)

W. W. Wolford sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. State your full name and address.

A. W. W. Wolford, address, Room 352, Seaboard Railway Building, Norfolk, Virginia.

Q. And your occupation, please?

A. I am assistant freight traffic manager for the Seaboard Railway.

Q. State briefly your traffic experience.

A. My traffic experience covers a period of more than 20 years, practically all in the traffic departments of railroads in Southern territory; the last 10 years as an official, the first ten years in various clerical capacities.

Q. Are you testifying solely on behalf of the Seaboard Air Line in this case?

[fol. 4749] A. No. My testimony is in behalf of Southern territory lines as a whole, although some of it will be supported by facts and figures of the Seaboard Railway alone.

Q. Have you two exhibits and a prepared statement, both of which have been distributed?

A. I have, yes, sir.

Mr. Gwathmey: Mr. Chairman, the original exhibit was distributed at Columbus, and we have added one page since, which is intended to answer a question which your Honor asked several witnesses in Columbus. I think we should ask that the separate page be given one exhibit number.

Commr. Aitchison: Which one do you want marked 203?

Mr. Gwathmey: The single page headed, "Seaboard Railway—Southern Region—Class I Railroads," and the exhibit headed at the top "Index of Contents" to then be marked Exhibit No. 204.

Commr. Aitchison: The exhibits will be so identified.

(Exhibits 203 and 204, Witness Wolford, marked for identification.)

By Mr. Gwathmey:

Q. Mr. Wolford, pages 1, 2 and 3 of your prepared statement set forth your conclusions concerning the importance from a revenue standpoint of the traffic moving on class rates under classification ratings. Can you state briefly what your conclusions are as to the amount of revenue that is derived from that traffic?

[fol. 4750] A. Yes. My Exhibit No. 203, in the upper left quarter, shows the total amount of revenue annually derived from carload traffic; also from less carload traffic, and the percentage relationship of the less carload revenue to the total carload and less carload revenue.

My information is that approximately 25 per cent of the less carload revenue comes from traffic moving on class rates and under classification ratings.

Commr. Aitchison: Do you include the column rates?

The Witness: Yes, sir.

Mr. Gwathmey: No.

The Witness: Not column rates; that is in the classification proper.

Commr. Aitchison: Not exceptions to the classification?

The Witness: Many of the columns are in both the classifications and the exceptions. Column 100, for example, is in both. If you go to the classification for the rating that you apply on the traffic, then it is moving under the classification, but if you go to the exceptions, and if you find that it takes first class in the exceptions, why then it is moving under the exceptions and not under the classification.

Commr. Aitchison: Well, I am just trying to find out what you have included here, and I don't know now from your answer.

The Witness: I have everything, every column that is in [fol. 4751] the classification, if you go then to the classification for the rating.

Now, the columns that are in the classification are Classes 1 to 12, and the multiples of the first class, and three or four odd columns, such as 50 per cent, and I believe 57½ and 47½ on certain individual commodities. They are named in the classification.

The columns that I speak of are specifically named in the classification as being class rate columns.

Commr. Aitchison: Now, suppose you find in a tariff a provision that a given article should take, we will say, 50 per cent of first class; would you call that a class rate or not?

The Witness: No, you have to go to the classification to find that it does take 50 per cent. You do not find that in the class tariffs. You cannot apply a class rate on an article until you go to the classification and find it in there.

Commr. Aitchison: You mean that your tariffs on the Seaboard are so constructed that you do not have any rates published in the way I have indicated, independent of your class scale, but a provision that a given commodity shall take 50 per cent first class or some other per cent?

The Witness: Many tariffs, including Seaboard tariffs, carry in them what are termed exceptions to the classification. Is that what you are thinking of?

[fol. 4752] Commr. Aitchison: Yes.

The Witness: Well, those I do not term class rates moving from under classification ratings. They are class rates moving on exception ratings.

Commr. Aitchison: Well, are they in or out of this statement here?

The Witness: They are out.

Commr. Aitchison: Although the exception might be that fourth class should be applied instead of third, still you left it out?

The Witness: Yes, sir, because then it is not moving under the classification.

Commr. Aitchison: I just wanted to make sure what you had in mind. We changed the first class rate, however, and we changed that rate, don't we?

The Witness: No, sir. If you make a new class rate subject to the classification, you will not change that particular rate. It will still be applicable against the old class rates.

By Mr. Gwathmey:

Q. Mr. Wolford, having in mind the question which the Commissioner asked several witnesses at Columbus, have you undertaken to make an estimate here of the amount of revenues which the Seaboard derives from traffic which moves under class rates?

A. I have made an estimate here, although I have not [fol. 4753] made any study on which the estimate is based.

Q. What is that estimate?

A. I have estimated that 25 per cent of the Seaboard Railway's less carload revenue would move or would be derived from traffic moving on class rates under classification ratings, and it is my estimate that a similar amount of revenue would be derived from carload traffic moving on clas rates under classification ratings.

Commr. Aitchison: 20 or 25 per cent?

The Witness: Not of carload revenues; a similar amount of revenue from carload traffic.

Commr. Aitchison: Well, what is the difference between carload revenue and revenue from carload traffic?

The Witness: There is considerable difference.

Commr. Aitchison: What is it?

The Witness: Well, let me clear up my answer, and then you perhaps won't want an answer to that. I estimate that

25 per cent of the less carload traffic is derived from traffic moving on class rates and classification ratings.

Now, applying that 25 per cent to the Seaboard's less carload traffic on the exhibit there for the year 1941, of $5,269,000, 25 per cent of that would be roughly $1,250,000. Now, I say another million and a quarter dollars would be derived out of the carload traffic of $45,000,000; in other words, an equal amount of carload traffic would be about [fol. 4754] what would move on class rates under classification ratings.

Commr. Aitchison: Something like 2 or 3 per cent?

The Witness: Yes, somewhere between 2 and 3 per cent. The total figure for both carload and less carload would be about two and a half million for the Seaboard alone.

Mr. Norman: May I ask a question about this column rate percentage? I don't know whether I understand that witness.

If a rate is published, we will say, 30 per cent of first class, and the first class rate is changed, what happens to that rate that is published at 30 per cent of first class?

The Witness: I will have to explain to you the mechanics of the tariff to answer that. Tariffs on their face refer to someplace where you will find the articles that take 30 per cent of first class. The 30 per cent alone does not do you any good, as far as checking the rate is concerned. You will have to find the classification that will tell you where to use 30 per cent on a given article.

If you find from that classification that the article takes 30 per cent, then it is moving on a class rate, under classification rating. If the front of the tariff makes it subject to exceptions to the classification, and you go to the exceptions, and it tells you to use 30 per cent, then you are not using the classification rating, but you are using the exceptions.

Mr. Norman: Well, waiving whether you are using the [fol. 4755] classification or exceptions, what is going to be the effect of that rate, of changing the first class rate?

Chmn. Alldredge: They could continue the old class rates, for that purpose.

Commr. Aitchison: That is what was done with fruits and vegetables in New York, in some of these cases.

The Witness: It was done in the Consolidated Southwestern Case too.

Commr. Aitchison: They carried the old class rates and the column rating applicable. However, Mr. Wolford wants the tariffs published in this way, that on a particular item, which the tariff maker wanted to deal with, he could provide that the article should take 30 per cent of the class rate shown on Agent so and so's tariff, No. such and such, properly designated, and the re-issues thereof and supplements thereto; and then, wouldn't it change with the first class rates?

The Witness: If I understand your statement, it would, yes.

Commr. Aitchison: So that you have got to take that into account before you can tell whether the first class rate is going to change a rate on a particular commodity that happens to be out of the classification for the time being.

The Witness: Yes, sir. I am merely assuming that the Commission, in fixing these first class rates, will make them subject only to the classification. If you see fit to make [fol. 4756] that exception to the exceptions as well, why, that will multiply the amount of revenue involved many times, because there is far more revenue derived from traffic moving on exceptions than on the classification.

Chmn. Aldredge: Does that prove to your mind that the exception is giving way and the function normally performed by the classification is being performed by exceptions?

The Witness: That is the situation at the moment. I don't know that you could say that that was a permanent situation, though, but it certainly is now.

By Mr. Gwathmey:

Q. There were many commodities, Mr. Wolford, put over under the exception ratings which had formerly taken the class rate proper.

A. Yes, sir.

Q. As the result of the percentage changes, and the increases that were authorized in some of the general revenue cases.

A. Yes. That was the result in a lot of applications under Ex Parte 123; a lot of the traffic that had theretofore moved on the classification ratings was given the separate ratings.

Q. Pages, 4, 5, 6 and 7 of your prepared statement seem to set forth the extent to which conditions have changed

since the present level was prescribed, and became effective in 1928 within, from and to Southern territory.

Can you summarize very briefly these changed conditions?

Commr. Aitchison: Why, if he is going to put the whole [fol. 4757] statement in.

Mr. Gwathmey: Well, I am perfectly willing to put it all in, if you will let me read it, but I just want to make something explanatory of the system, and I am merely trying to point out the conclusions that we are trying to establish.

Commr. Aitchison: Off the record.

(Discussion off the record.)

Mr. Gwathmey: With your Honor's permission I will go ahead, and if I seem to transcend too far, I will adopt some other method. I have only about three or four questions to ask Mr. Wolford.

Commr. Aitchison: All right.

By Mr. Gwathmey:

Q. Go ahead, Mr. Wolford.

A. Yes. The rate level has become lower through reductions made to meet competitive conditions; costs as reflected in wage scales, prices of materials and other cost factors have increased; and as to less carload traffic the service rendered has also increased through the inauguration of pick-up and delivery service, which costs the railroads about 7 per cent of all less carload revenue collected. The figures covering pick-up and delivery costs are shown on the lower half of my Exhibit 203.

Q. At pages 6 and 7 of your written testimony and on your Exhibit No. 203, have you reproduced figures showing how the Seaboard Railway has fared under the present class [fol. 4758] rate structure?

A. The Seaboard Railway went into receivership in December, 1930, and since that time, through 1941, has accumulated deficits totaling $66,475,190.

Commr. Aitchison: Now, that is net income, isn't it?

The Witness: Yes, sir.

Commr. Aitchison: That net income was derived by retention of the accrued interest, although not paid, among other things.

The Witness: That is right, sir.

Commr. Aitchison: Do you ever expect to pay it?

The Witness: I don't know about that.

By Mr. Gwathmey:

Q. Pages 9 to 15, inclusive, of your written testimony covers rebuttal of sheets M-2 to M-33 of Witness Maurer's Exhibit 92.

Can you briefly state the substance of your rebuttal?

Q. Yes. These pages of Witness Maurer's exhibit primarily showed that the class rate structure within southern territory reflected the Docket 13494 Appendix K-2 scale, except that to and from Florida peninsula certain arbitraries are added.

Pages 9 to 15 of my written test-mony and pages 2, 3, 4, 5, 6 and 6-A of my Exhibit No. 204 have for their purpose showing that even with these Florida peninsula arbitraries added to the basic scale, the resulting progression of the scale produces rates not too high for the additional mileage [fol. 4759] and service in relation to the progression of the scale up to the point where the arbitraries begin to be added.

In other words, the progression of the Appendix K-2 scale for the longer hauls is retarded more than is justified by the additional transportation service involved in the additional mileage, and the addition of the peninsula arbitraries into the scale for the added distance into the peninsula produces a rate of progression and rates for the added haul into the peninsula that are not too high in comparison with the charges under the scale up to the point where the peninsula arbitraries begin to be added.

Q. Pages 16, 17 and 18 of your written testimony, and page 7 of your Exhibit No. 203 cover rebuttal of pages M-57 to M-71 of Witness Maurer's Exhibit No. 92?

A. Yes. Pages M-57 to M-71 of Witness Maurer's exhibit compares the class rate level between Official territory and Florida points with the class rate level in Official territory for the same distance. The comparison is made by totaling the rates of the first six classes. It is, therefore, a comparison of first class with first class, second class with second class, and so on, class for class through sixth class.

Page 7 of my exhibit shows that the classification ratings in Official and Southern classifications are predominantly matched on equal percentage columns, and not class for class. Witness Maurer's exhibit ignores this fact and

[fol. 4760] therefore presents an erroneous and exaggerated picture of the amount by which the rate level to Florida exceeds the rate level within Official territory.

Q. Have you further in your testimony undertaken to rebut certain testimony given by Witness Morrell of the Manufacturers Record?

A. Yes, sir.

Q. And also testimony given by Mr. Conville, a shipper who, as I recall, manufactured washboards?

A. Yes, sir.

Mr. Gwathmey: Mr. Commissioner, if it is agreeable, I would just ask to have the statement copied into the record without reading it. I have tried to explain what it shows.

Commr. Aitchison: That may be copied.

Mr. Gwathmey: And I offer the two exhibits.

Commr. Aitchison: Without objection, Exhibits 203 and 204 are received.

(Exhibits 203 and 204, Witness Wolford, received in evidence.)

(The statement is as follows:)

Q. (By Mr. Gwathmey). State your name, address and occupation.

A. W. W. Wolford, Room 352 Seaboard Railway Building, Norfolk, Virginia.

I am assistant freight traffic manager of the Seaboard Air Line Railway, and have held that position for more [fol. 4761] than four years.

Q. Briefly state your traffic experience.

A. My traffic experience covers a period of more than twenty years, practically all in the traffic departments of railroads in Southern Territory, the last ten years as an official, the first ten years in various clerical capacities.

Q. Are you testifying solely on behalf of the Seaboard Air Line Railway?

A. No, my testimony is in behalf of Southern Territory lines as a whole, although some of it will be supported by facts and figures of the Seaboard Railway alone.

Q. Can you give any information concerning the importance to the Seaboard Railway of the revenue derived from traffic moving on class rates under classification ratings?

A. Not accurately. My answer will necessarily to an extent be a judgment figure. No records are kept in the normal course of business from which the answer can be determined.

However, a great majority of less carload traffic moves on class rates, and a relatively small per cent of carload traffic, and the railroads do keep a record of less carload tonnage and revenues separate from carload tonnage and revenues. These less carload figures are reported to the Interstate Commerce Commission, and are published in their Freight Commodity Statistics, Class I Rail Carriers, Statement 42100 Series. These figures for the Seaboard Railway and for the Southern region are reproduced in [fol. 4762] my exhibit.

It will be seen that the Seaboard's revenue from less carload traffic has varied from 10.4 per cent to 15.1 per cent of total revenue from both carload and less carload freight during this eleven year period. The percentage for the Southern region ranged from 9.2 per cent to 14 per cent.

However, all less carload freight does not move on class rates, and all that moves on class rates does not move under classification ratings. Most of it moves under ratings in Exceptions to the Classification.

It is my belief that approximately 25 per cent of less carload revenue is derived from less carload traffic moving on class rates and under classification ratings. Applying this figure to the Seaboard's 1941 lcl traffic, it will be seen that in money it amounts to more than one and one-quarter million dollars annually for the Seaboard Railway alone, and on its less carload traffic alone. When carload traffic is included, it is my opinion that this figure would be roughly doubled, and would be two and one-half million dollars. The following commodities are mentioned as examples of carload traffic moving on class rates under classification ratings;

Machinery, especially cotton mill machinery, taking sixth class.

Agricultural implements, taking sixth class.

Bicycles, taking third class.

Radio receiving sets, taking third class.

[fol. 4763] Matches, taking fifth class.

As I have stated above, all traffic moving on class rates does not move on ratings in the classification proper, but

much of it moves on class ratings in Exceptions to the Classification. A reduction in class rates, even though the new class rates were made subject only to the classification would create demands for reduced rates on much traffic theretofore moving on Exceptions ratings, to the extent that the new rate subject to the classification proper rating made lower charges than the old rates subject to Exceptions ratings.

When less carload traffic moving on class rates under ratings in Exceptions to the Classification is included, it will, in my opinion, involve an additional 50 per cent of less carload revenue, or a total of 75 per cent moving on class rates, under ratings on both the Classification and Exceptions.

This 75 per cent applied to the Seaboard Railway's 1941 lcl revenue would be equivalent to approximately three and three-quarters million dollars. Of course, the carload traffic moving on class rates under ratings in Exceptions to the Classification would involve revenues many times greater than that involved on less carload traffic.

On that particular point, Witness B. F. Morris' exhibit at the Columbus hearing made an analysis on sheets 1 to 34, inclusive, of the effect of the application of the rate level prescribed in the Eastern Class Rate Case upon [fol. 4764] commodities now moving under Exceptions ratings or so-called "Column rates" within, from and to Southern territory. That test showed that the Official territory class rate level, if applied within, from and to Southern territory, and made subject only to the ratings in the Official classification proper, would reduce 71 per cent of the rates now applicable under existing Exceptions ratings.

That test further showed the Official territory class rate level, if applied within, from and to Southern territory, and made subject to the Official Classification and Exceptions, would reduce 93 per cent of the rates now applicable under existing Exceptions ratings.

Answering your question more specifically, if the Commission should prescribe a lower level of class rates within, from and to Southern territory, and should make such class rates subject only to the Classification proper and not to Exceptions ratings, it would affect traffic producing an annual revenue of about two and one-half million dollars for the Seaboard Railway alone.

Q. What have you to say regarding any changes in conditions that may have occurred, as affecting the justification for the present class rate level and revenues, or a reduced class rate level and revenues?

A. In answering that question, I wish to divide the time period into two parts and discuss each separately. The [fol. 4765] first period will be from the time the present class rate structure was prescribed and became effective in 1928, and to and including the Ex Parte 148 increase effective March 18, 1942. The second period will be after Ex Parte 148.

The present class rate level within Southern territory and between Official Territory and Southern territory was prescribed by the Commission in the Southern Class Rate Investigation, Docket 13494, and became effective January 15, 1928. Most of the traffic covered by the Manufactures and Miscellaneous group of the Commission's Freight Commodity Statistics also moves on percentage columns of the first class rate there prescribed.

Between the South and the Southwest the class and commodity rate structure was prescribed in the Consolidated Southwestern Cases, and became effective July 14, 1928.

Since that time and up to the time the effect of the war was felt on traffic, there has been a constant whittling away of the rate level through reductions made in order to meet competitive conditions, and, at the same time, since the depression years, a constant increase in costs of the transportation service.

Specific evidence of the extent to which the rate levels on individual traffic have been reduced is already of record in an exhibit filed at the Indianapolis hearing by Witness Morriss. It is further shown by the gradual recession in [fol. 4766] the ton-mil- revenue since this prescribed rate level became effective.

The ton mile revenue for Class I Carriers, Southern Region, for the year 1929 was 10.88 mills for an average haul of 195 miles. It continued at this level through 1932 when it was 10.89 mills for an average haul of 202 miles.

From that point it has gradually receded, except for a temporary increase in 1938, the year Ex Parte 123 became effective, and 1939. By 1941 it had dropped to 9.46 mills for an average haul of 201 miles. This ton mile decrease

would be much more pronounced if it could be obtained separately for traffic that generally moves on class rates and percentage column rates, which is the traffic that has felt the competition from other forms of transportation most, and has received the greatest reductions.

Other traffic not moving on rates related to the class rate structure, such as coal, lumber and cement, representing a substantial part of the total traffic, has received either no reduction or only slight reductions, which prevents this recession in the ton mile revenue figure from disclosing the full extent of the recession in the class rate structure, and in the commodity rate structure that is related to the class rate structure through being a percentage column of first class.

Two general increases have been granted and are in [fol. 4767] effect, the Ex Parte 123 increase of 10 per cent in 1938, and the Ex Parte 148 increase of 6 per cent on some traffic and 3 per cent on other traffic, made effective in March, 1942, but subject to an expiration date. Both were designed to, or at least did not more than offset in some degree specific new burdens of cost added upon the railroads and did not have the effect of improving the already inadequate rate level before those new burdens developed.

The specific new burdens I refer to in connection with the Ex Parte 123 increase were the imposition of Social Security and Railroad Retirement taxes, wage increases, and the then recently increased costs of materials. The Commission in its decision in Ex Parte 123, 226 ICC 41, at page 136, said:

> "The present revenues of the applicants are inadequate."

Also, "The record shows that the existing basis of rates is not sufficient to maintain in full vigor either rail or water transportation.

The Ex Parte 148 increase also did no more than partially offset additional specific new burdens of cost and did not contribute anything toward relieving the already existing inadequacy of the rate level, before these new cost burdens developed. The new increased cost burdens are set forth in the report, and are increased wages, increased

prices of materials and supplies, and certain other increased cost factors.

[fol. 4768] The Commission granted an increase of 6 per cent on some traffic and 3 per cent on other traffic, but limited it to expire six months after the termination of the war.

There is also one other changed condition of importance occurring during this period that has a bearing upon the continued reasonableness of the present class rate structure. That factor is the inauguration of pick-up and delivery service, and allowance. It was inaugurated in 1936. My exhibit shows the amount of that expense to the Seaboard Railway each year since its inauguration, and the percentage relationship of that expense to the total less carload revenue. It has ranged from 6.1 per cent to 7.5 per cent. It averages more than 7 per cent. I have no reason to doubt that these percentage figures for Seaboard are representative of all the Class I Carriers in the Southern Region. From both the railroads' and the shippers' standpoint, it was the equivalent of a reduction of 7 per cent in the less carload rate level.

To summarize my answer to your question covering this period, the changes in conditions that have occurred are that the service performed has increased through the inauguration of pick-up and delivery service; the rate level has declined below the level originally fixed by the Commission as reasonable and cost factors, such as wages, taxes and prices of materials and supplies have increased.

Q. How has the Seaboard Railway individually fared [fol. 4769] since the rate structure became effective in 1928?

A. The Seaboard went into receivership on December 31, 1930, as shown on the right side of my Exhibit 204, page — has had a deficit from operations each year since 1931 through 1940, inclusive. The total deficit for the eleven year period 1931 through 1941 was $66,475,190. This deficit is almost 40 per cent greater than the total revenue derived from less carload freight during that period.

Q. How much higher would the rate level have had to be in order to wipe out this deficit?

A. The total freight revenue of the Seaboard during that eleven year period was $361,519,656. The deficit was $66,175,190. So the total freight revenue needed was the sum

of those two figures, or $427,994,846. This latter figure is 118 per cent of the actual freight revenue, so it would have required a rate level averaging 18 per cent higher than was in effect to wipe out this deficit during this period.

Q. Now, returning to my question regarding any changes in conditions that have occurred since the present class rate levels were originally prescribed by the Commission. In your answer you dealt with changes up through Ex Parte 148. What changes in conditions have occurred since that time?

A. The volume of traffic carried and freight revenue has increased substantially, so that even though cost of operation has also increased substantially, the net showing has improved.

[fol. 4770] The Seaboard for 1942 had a net income carried to profit and loss amounting to $2,819,263, as compared with $1,181,070 in 1941. The total for those two years is $4,000,333. This must be contrasted with the deficit for the prior ten years of $67,656,260. This favorable showing for these two years does not loom very large in comparison with the very poor showing of the prior years.

The question also arises how long this increased volume of traffic will last. The increased volume of traffic is a direct result of the nation's war effort, and it cannot be expected to last any longer than the duration of the war.

The year 1939 is in my opinion about as typical as any year that could be selected, of normal conditions before the effect of the war traffic was felt. It may therefore be treated as substantially typical of the traffic conditions that will return when the war traffic has disappeared and normal competitive conditions return.

In that year the Seaboard had operating revenues from freight of $34,630,738, and expenses of $25,183,628, producing a freight operating ratio of 72.72. Its deficit that year was $5,556,555. However, while the volume of traffic and revenue may be expected back to about the 1939 level of $34,630,738, it is certain that the expense of operations will not drop back to that level. The 1941 wage award adjusted to 1939 payrolls charged to operating expenses, freight [fol. 4771] proportion, I estimate amounts to roughly about two and a half million dollars. Taxes likewise have increased and there is little prospect of that cost element dropping back.

After giving the present favorable revenue showing of the railroads full recognition, I can arrive at no other conclusion that I consider sound, reasonable and justified, than that this favorable showing is the result of war traffic; that traffic and revenues will after the war revert to pre-war levels, but expenses will not, and that the present rate level will be more inadequate than it was before the war.

Q. Now, have you some testimony directed to rebuttal of certain prior witnesses?

A. Yes, the testimony that follows will be primarily directed to rebuttal of evidence of Witness Maurer as contained in his Exhibit 92, Witness Morrell, and Witness Foiville, but it is also intended as rebuttal of other witnesses whose testimony was similar to that of either of these three.

Q. Please proceed.

A. Witness Maurer on sheets M-2 and M-3 of his Exhibit 92 showed the distances between nine Florida peninsula points on the one hand, and sixteen Southern territory points on the other hand. On subsequent sheets Nos. M-7 to M-33 these distances were used in making a comparison of the level of the class rates actually applicable, which rates of course included the peninsula arbitrary, with the class [fol. 4772] rates under the Appendix K-2 Scale plus the Ex Parte 123 ten per cent increase applicable in the remainder of Southern territory.

Stated in another way, these pages of his exhibit purported to show how much higher the Florida peninsula arbitraries made the rates than the K-2 scale level of rates applicable in the remainder of Southern territory. The percentage of excess varied from a minimum of 4.5 per cent at Gainesville, Florida, a point near the northern border of the peninsula arbitrary territory, to a maximum of 12.6 per cent at Miami, a point deep in the arbitrary territory.

Of course, everyone will concede that when the peninsula arbitraries are added to the K-2 scale level of rates applicable elsewhere in Southern territory, the resulting rates are higher than the K-2 scale level, but conclusions as to how much higher will depend on the method used in making the comparison.

Concerning the method used, Witness Maurer for example on sheet M-6 shows that the rate level from Jacksonville, Florida, to Cincinnati, Ohio, contains no excess over

the Appendix K-2 level; but on page M-33 shows that Miami to Cincinnati the rates contain an excess of 8.9 per cent over the Appendix K-2 level meaning that Miami has a handicap of 8.9 per cent in its rate level as against Jacksonville.

The distance from Miami to Cincinnati is 1156 miles, however, and from Jacksonville to Cincinnati, 806 miles. The [fol. 4773] comparison is being made in the two scales at different spots in their graduation, namely, the 806 mile spot versus the 1156 mile spot. When that difference is translated into a common basis of comparison, such as ton mile earnings, it is found that the rate from Jacksonville reflects a level that pays 56 mills per ton mile, whereas the rate from Miami reflects a level that pays 51 mills per ton mile.

Actually therefore the shipper at Miami is paying a lower mile-for-mile rate level for his transportation service to Cincinnati than the shipper from Jacksonville is paying.

The question then may occur to some whether this is not merely a technical point of difference that offsets itself when a comparison is made to a point where the relationship in the distances would be reversed, and Miami would be 806 miles and Jacksonville 1156 miles. The answer is that the relative situation never changes and never can offset this defect. Miami is always approximately that distance over Jacksonville to every part of and any destination in what I will term southern territory proper, meaning that part of Southern territory within which the Appendix K-2 scale level of rates was prescribed and applies.

Although inter-territorial hauls are not involved in this particular part of Witness Maurer's exhibit, with which I am now dealing, this would also be true of inter-territorial hauls to and from Official territory where the rates have [fol. 4774] been made with some degree of relationship to level within Southern territory itself. Furthermore, a common mileage basis of comparison cannot be created by assuming a haul of 1156 miles from Jacksonville to any destination within Southern territory proper to make it the same mileage haul as from Miami to Cincinnati, because there is no such thing as a haul of 1156 miles from Jacksonville.

I purposely selected Cincinnati to use as an illustration because it involved the longest haul of any of the 16 representative points throughout southern territory proper used.

by Witness Maurer, and it being on the opposite border of Southern territory from Jacksonville represented the maximum possible haul under the Appendix K-2 scale level of rates from Jacksonville.

The Southern territory, excluding the peninsula to and from which the peninsula arbitraries are added, is geographically roughly circular, the City of Atlanta no doubt not being far from the geographical center.

On page 2 of my exhibit 203 I have reproduced the origins, destinations and distances shown on Sheet M-2 of Witness Maurer's Exhibit 92. I have also added the average distances, the first class rates and ton-mile earnings, which I will mention again later.

On page 3 of my Exhibit 203 I have taken the same 16 Southern territory proper destinations used by Witness [fol. 4775] Maurer on sheet M-2 and shown the distance from each such point to the remaining 15 points.

It will be seen that from Atlanta in approximately the general center of Southern territory the maximum haul in any direction within Southern territory is to Richmond, 542 miles. Obviously shippers at Atlanta only make use of the K-2 scale for distances 5 miles to around 550 miles. I have already pointed out maximum haul from Jacksonville on the Southern border to the most distant point on the northern border, which is Cincinnati, is 806 miles, as shown in Witness Maurer's exhibit, sheet M-2.

The very longest haul to be found on page 3 of my exhibit is from New Orleans on the southwestern border to Richmond on the northeastern border, 1032 miles.

The peninsula territory from and to which the arbitraries were prescribed is geographically attached to the border of southern territory proper and consequently reflects hauls to any given point in southern territory proper, or an average to all points that are, using Miami as about the maximum example, as much as 350 miles greater than the corresponding haul within Southern territory under the Appendix K-2 scale level.

The bottom of page 2 of my exhibit shows the average haul between the nine peninsula points selected by Witness Maurer and 16 Southern territory points to be 665 miles. [fol. 4776] The bottom of page 3 shows the average haul reflected by the 16 points in Southern territory proper is 448 miles. Although the Southern territory proper points do have use of the Appendix K-2 scale without any arbi-

trary, their use of the scale is for shorter distances where the scale is relatively higher than it is for the longest distances involved when the haul is from the peninsula. The figures at the bottom of page 2 show that the ton mile earnings from the peninsula origins is 65.9 mills, whereas the ton mile earnings shown on page 3 for the average haul in Southern territory under the Appendix K-2 scale level without the arbitrary is 74 mills.

Inasmuch as the comparative distance hauled under a common scale level of rates is always longer when from the Peninsula to Southern territory proper than when within Southern territory proper, the real question presented is not whether Miami is paying a rate level 8.9 per cent higher than Jacksonville for 1156 miles under a scale that Jacksonville never uses for distances above 806 miles, but whether the progression of that scale, including the arbitrary beyond 806 miles is too steep for the additional distance.

To illustrate this I have prepared page 4 of my exhibit. On the left side there is shown the Appendix K-2 Southern territory scale as of today. A straight line progression in a scale would bring about the payment of the same per mile rate per unit of traffic hauled, regardless of length of haul. [fol. 4777] The extent to which a scale is modified below a straight line progression determines how fast the per mile rate of return per unit of traffic falls as distance increases. Any drop below straight line progression generally rests on the assumption that cost of service decreases approximately as fast else it would not be justified.

Page 4 shows Richmond as an origin. The destinations on the right side are along the route of the Seaboard Railway into Miami, each destination being spaced exactly opposite its mileage block in the scale on the left. The Southern scale without arbitrary applies as far as Jacksonville. South of Jacksonville, the peninsula arbitrary is contained in the actual rates shown to the specific destinations on the right side of the sheet. It will be seen that despite the addition of the arbitrary no point south of Jacksonville pays a higher rate level per ton per mile of transportation service received than does Jacksonville. On the contrary, beyond Gainesville the decline in the ton mile earnings continues. When Miami is reached we find Miami paying 55.1 mills per ton for each mile of transportation service received whereas Jacksonville is paying 63.1 mills for the same amount of transportation.

The scale on the left shows that, exclusive of any arbitrary, it declines beyond Jacksonville from 63.1 mills for 621 miles to 49.8 mills for 1000 miles which is the Miami mileage block, but considering the more favorable conditions [4778] in the Southern territory proper than in the peninsula, any recession of earnings below those earned to Jacksonville would be a concession. The more favorable transportation conditions mentioned have been placed in evidence by other witnesses and will be summarized on brief, so I do not consider it necessary to attempt to summarize them here.

Page 5 is similar to page 4, the difference being that it uses Atlanta, Georgia, as the origin. Atlanta may be considered a representative short haul origin on traffic into the peninsula whereas Richmond is a long haul one.

Page 6 is a graph illustrating the decline in the ton-mile earnings already shown on page 4 of my exhibit. It shows beginning at Savannah, using Richmond as the origin, the rate of decline in the Southern territory scale exclusive of the peninsula arbitrary. It also shows the rate of decline including the peninsula arbitrary beyond Jacksonville. Despite the inclusion of the arbitrary the scale continues to have a substantial decline. The downward trend of the line containing the arbitrary runs almost parallel to the downward trend of the scale without the arbitrary, the difference being not in the rate of decline, but in the fact that the scale with the arbitrary is about five mills higher in its level.

Page 6-a measures the percentage of decline in ton-mile [fol. 4779] earnings beyond Jacksonville first under the Southern Scale which includes no arbitraries, second under the Southern scale with the peninsula arbitraries included beyond Jacksonville, and third under Witness Jensen's scale. Under the Southern scale the decline is down to 81.3 per cent; under the Southern scale with the arbitrary included, the decline is down to 87.3 per cent; and under Witness Jensen's scale the decline is down to 84.8 per cent.

Pages M-57 to M-71 of Witness Maurer's Exhibit 92 undertake to demonstrate how much higher the existing published class rates are than class rates would be if made on the Official territory Docket 15879 Appendix E class rate scale level between Jacksonville, Lake Wales and Miami, Florida, on the one hand, and 16 Central territory points on the other hand.

Mr. Maurer made the comparison, class for class, first class through sixth class inclusive. I have reproduced from page M-58 of his exhibit the comparison of rates between Chicago, Illinois, and Jacksonville, Florida in order to illustrate the method of comparisons used by Mr. Maurer and show the defects of that method. This information is found on the top part of page 7 of my exhibit.

It will immediately be seen that this class for class method of comparison ignores the fact that the percentage relationship to first class is different. For example, under fourth class it has the effect of comparing 55 per cent of Southern first class with 50 per cent of Official first class. [fol. 4780] Under fifth class it compares 45 per cent of Southern first class with 35 per cent of Official first class. Under sixth class it compares 40 per cent with 27½ per cent. The particular comparison between Chicago and Jacksonville in the right hand column purports to show that the rates in effect exceed the rates produced by the Docket 15879 Appendix E scale by 48 per cent rather than the 38 per cent produced by a comparison of equal percentage columns such as is reflected by first, second and third classes.

On the lower half of the page there is shown by me an analysis of the Classification ratings to demonstrate that the Classification ratings in Official and Southern territories are predominantly matched on equal percentage columns, and not class for class. The equal percentage ratings or matched ratings are shown in the blocks. The unmatched ratings on the left of each block are ratings that are higher in Official classification than in Southern. The unmatched ratings to the right of each block are ratings that are lower in Official Classification than in Southern. They are analyzed at the bottom of the page.

Attention is first directed to the analysis of the less carload ratings. It will be seen that 91 per cent are matched ratings. The remaining 9 per cent, which are unmatched ratings, are almost wholly instances where the ratings in Official Classification are higher than in Southern. [fol. 4781] This means that when differences in classification ratings are taken into account, the Official level of class rates is not merely 38 per cent lower than the actual applicable class rates, but is some percentage slightly less than 38 per cent.

The analysis of the carload classification ratings shows 50 per cent are matched ratings. The remaining 50 per cent representing the unmatched or unequal ratings predominantly reflect a lower percentage column in Official than in Southern Classification. This would, without further examination, seem to indicate that as then to carload traffic the Official level of rates would be lower than the applicable rates between Chicago and Jacksonville by a percentage slightly higher than the 38 per cent produced by the relationship of equal percentage columns.

The carload ratings in the Southern classification proper on these high classes 1 to 6 mean very little, because not much traffic would move on them. Any traffic from Chicago to Jacksonville for example rated sixth class or higher in the Classification proper would generally move on either a lower exception to the Classification or a commodity rate. As a matter of fact, there are all-freight rates generally applicable from Central territory to Southern territory that are 40 per cent of first class and subject to a few exceptions, 40 per cent would consequently be the ceiling for carload traffic from Central territory to Jacksonville:

[fol. 4782] Of course, the relationship of the two rate levels will depend upon the kind of traffic actually moving. Page 9 of my exhibit analyzes the actuall less carload traffic moving on September 1, 1942, to and from Orlando, Florida. The revenue under the Official territory level is 28.3 per cent lower than the actual revenue, or, stated the other way, the actual revenue is 39.4 per cent higher than the revenue that would be produced by the Official level.

In this particular comparison the applicable rating on which the traffic did move to or from Orlando, or would move under the Official level of rates was used, and not merely the Classification proper rating. In other words, this comparison of the difference in rate levels takes into account differences in both the Classification proper and the exceptions to the Classification and does not reflect merely the difference in the Classification proper ratings.

This page shows that even to a Florida peninsula point when the rate includes the peninsula arbitrary the applicable level is only around 39 per cent higher than the Official level. The prior page shows that to Jacksonville, a point not having the Peninsula arbitrary in its rates, the percentage on a straight first class or equal percentage column comparison is 38 per cent, but taking into account differ-

ences in classification, it is convincing that the percentage is lower, but how much lower cannot be accurately deter-
[fol. 4783] mined without applying the ratings to actual moving traffic.

Q. Were you present at the Indianapolis hearing, and did you hear the testimony of Mr. Eric Morrell, Editor of the Manufacturers Record?

A. Yes, I was present and heard his testimony.

Q. Then you will recall his testimony to the effect that there was a lack of manufacturing plants of substantial size in the South which he ascribed in part to the Southern freight rate structure, and that he and his publication had been active in endeavoring to locate such industries in the South?

A. Yes.

Q. Does the Seaboard Railway as a part of its traffic department have what is known as an industrial department?

A. Yes, the Seaboard Railway has an industrial department with a staff of five officers who devote their principal time and efforts to the location of industries on the Seaboard. They are constantly engaged in a cooperative effort with industries that are looking for a suitable location.

Q. Then would you say that the Seaboard Railway through its industrial department would or would not likely have knowledge of prospective industries which have been in the past or are now interested in a location in the South?

A. Our railroad through its industrial department would generally have knowledge of any such potential industry. [fol. 4784] Having that knowledge it would be active in developing from the promoters of such industry any obstacle to the location of that industry in the territory served by the Seaboard and would cooperate in efforts to bring about the removal of any such obstacles.

Q. Would the removal of obstacles to which you refer include removal of freight rate obstacles?

A. It certainly would, if the particular rate obstacle was a real or genuine one. Some might and occasionally do look upon any freight rate, however small and however favorably it may compare with the level generally available to his competitors, as an obstacle and seek reductions. Occasionally others look upon any rate in excess of the lowest rate to be found elsewhere on that commodity as an obstacle to be removed. My reference wasn't to those kinds of obstacles. When I said we will cooperate in removing

freight rate obstacle, speaking in general terms, I mean this:

In Southern territory we have a certain level of rates on any given traffic already available to shippers of that commodity. When a new manufacturer of that commodity comes into existence, he is, under any circumstances, entitled to the benefit of that level, and it will be given to him. If this manufacturer, new or old, is trying to sell within Official territory against competitors in that territory who have the benefit of a lower rate level, we always have [fol. 4785] and will continue to make every effort to make available to our shipper a rate level into Official territory competitive with that in Official territory. Some rather large industries have grown up in the South under that plan, and it does seem to be a plan that eliminates freight rate differences as an obstacle to the location of industries in the South.

Q. How many times in the years 1939 to 1941, inclusive, has Mr. Morrell, or his concern, the Manufacturers Record, of Baltimore, Maryland, contacted your industrial department presenting to it a manufacturer who had under consideration the locating of a plant in the South?

A. None.

Q. Has Mr. Morrell, or the Manufacturers Record, taken up with your company the desirability of some adjustment of freight rates to meet the needs of some prospective new manufacturer for the South?

A. No.

Q. How many new industries located on your railroad during the years 1939 to 1941, inclusive, and how many of them manufacture finished products?

A. Sixty-seven new industries located on the Seaboard Railway during that period. These included industries manufacturing finished products from the forests, such as sawmills, planing mills, building supplies, crate mills, barrel stave mills and furniture plants. Also tar products, charcoal, pine oil and sulphite pulp, all derivatives of the forest. [fol. 4786] These sixty-seven also include manufacturers of finished products from agriculture, such as canners of vegetables, canners of citrus fruit, canners of condensed milk, a manufacturer of cheese and a meat packer. These sixty-seven include manufacturers of finished products such as chemicals, industrial gases, sulphate of alumina and explosives.

Q. How many of these sixty-seven are manufacturers of unfinished products?

A. Only one. This is a manufacturer of steel alloys.

Q. What proportion of the sixty-seven would you say are shipping some part of their product into Official territory?

A. I have not made a study of the traffic of these specific plants to develop where each is shipping, but I am generally familiar with the extent to which traffic of this same kind from already existing plants in the South is moving into Official territory. Based on that familiarity I would say that about forty are shipping into Official territory. The remainder are probably distributing only locally within Southern territory.

Q. Have you anything to say regarding Witness Fonville's Exhibit 79?

A. Yes. Mr. Fonville, president and manager of the Carolina Washboard Company of Raleigh, North Carolina, filed Exhibit 79 showing shipments of washboards made from Raleigh to all destinations during September, 1941. [fol. 4787] The exhibit showed the charges applicable on the shipments and the charges that would be produced by the Official territory level. Forty-two less carload shipments moved to Official territory on which the exhibit showed that the total freight charges would be reduced from $184.06 to $168.92 or a difference of $15.14. Inasmuch as the applicable classification rating is third class under both Classifications, the difference is entirely in the rate level. It will be observed that the difference in the rate level is only 8 per cent.

In addition to the 42 less carload shipments that moved to Official territory, Exhibit 79 showed that 25 shipments moved from Raleigh to destinations in Southern territory. The freight charges collected under the Southern territory level were $158.69. The official level of rates produced $112.92, a reduction of $45.77.

Mr. Fonville named the Columbus Washboard Company, of Columbus, Ohio, as one of his chief competitors. On my Exhibit No. 203, which is a one-page exhibit, I have rerated these same shipments from Columbus, Ohio, and find that the Official territory level applied from Columbus, Ohio, to these Southern territory destinations reduces the freight charges from Columbus in the amount of $49.27, or $3.50 more than the reduction would be from Raleigh to these same destinations.

[fol. 4788] Taking all shipments to both Official and Southern territories the reduction for Raleigh would be $11.64 in excess of the reduction from Columbus, Ohio. The total weight involved is 30,089 pounds or about 3½ cents per hundred-weight. The exhibit did not show that Raleigh shipped washboards into Columbus, Ohio, itself, during September, 1941, but it did show it shipped washboards to points beyond Columbus, such as Chicago, Detroit and Toledo. The present rate from Raleigh to Toledo is 117 cents. The present rate from Columbus, Ohio, to Toledo, is 43 cents. The shipper at Raleigh is therefore not presently kept out of this market adjacent to Columbus by a rate difference of 74 cents per hundred pounds, only 11 cents of which is due to difference in the rate levels, the remaining 63 cents being due to the geographical disadvantage of Raleigh as compared with Columbus, as reflected in the difference in distance.

Exhibit 79 showed that there were no carload shipments from Raleigh during the one month test period of September, 1941, used by the witness as being a representative period. The only reference the witness made to the lack of carload traffic was the statement that:

"My distribution is limited only to the extent of the over-all or average freight rate advantage of my competitors, which advantage, aside from the less carload rates, is accentuated by their ability to ship a part of their pro-
[fol. 4789] duction in carloads."

There was no explanation given why Raleigh cannot ship in carloads. On the contrary the witness' exhibit 79 showed that on carloads the Southern Classification rating is 7th class or 35 per cent of first class, whereas in Official Classification the carload rating is 37½ per cent of first class. This means that the competitor in Official territory is at a disadvantage of 7.1 per cent in classification rating, which almost exactly offsets the advantage of 8 per cent he enjoys over Raleigh in the rate levels themselves exclusive of the Classification differences.

Commr. Aitchison: Cross examine.

Cross-examination.

By Mr. Norman:

Q. I would like to ask just a few more questions about this column business. Where rates are made the same percentage of first class, column percentage, in the various territories and interterritorially, the rates from the South to Official territory would reflect the 38 per cent that the first class rate is higher than the Official territory rate, wouldn't it?

A. Yes, sir.

Q. Now, if you change that first class rate, made it a parity with the Official territory rate, under your theory that rate that was made the percentage of the first class would continue to reflect the 38 per cent difference, would it not?

[fol. 4790] A. You will have to read that.

(Question read by reporter.)

A. No. If you change your first class rate to be the same in Southern territory as in Official, there would not be 38 per cent difference in the class rate any more; they would be equal.

Q. But you say that the column rate would not be related to the new first class; the rate would be related to the new first class.

A. What you are really asking is what commodities will the new first class rates apply on.

Q. I am not. I am going to ask what is going to happen to those commodities that are now published as a percentage or column of first class by exceptions.

A. They are going to stay the same unless the Commission sees fit to prescribe the classification, these exceptions to the classification, against the new class rates.

Q. In other words, the only way the Commission would reach that in this proceeding would be by putting this exception in the classification.

A. No.

Q. Is that right?

A. No. That would not be it. They would not necessarily have to do that.

Q. Well, how would they do it?

[fol. 4791] A. There are other ways they could do it.

Q. How?

A. Simply by saying in their decision that the new class rates shall be subject to the Southern classification and to exceptions to the Southern classification.

Q. The first class rate?

A. Yes. There is nothing difficult or complicated about the mechanics of how to do it, if they see fit to do it.

Q. Well, unless they took some one other of these subjects, it would not affect those rates at all, to change the first class rate, would it?

A. No.

Mr. Norman: That is all.

Commr. Aitchison: Anything further from Mr. Wolford?

Mr. Gwathmey: I understand that Mr. Wolford has two more exhibits, but he hasn't them with him this afternoon. I may call him tomorrow morning to put those exhibits in.

Commr. Aitchison: All right.

(Witness excused.)

C. C. Wimmer was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Will you please state your name?

A. C. C. Wimmer.

Q. Mr. Wimmer, with what company are you connected [fol. 4792] and in what capacity?

A. I am connected with the Seaboard Air Line Railway. I am assistant general auditor.

Q. Assistant general auditor?

A. Yes, sir.

Q. And your office is where?

A. Portsmouth, Virginia.

Q. Have you been connected with the accounting department of the Seaboard Air Line Railway for a number of years?

A. Yes, sir. I have been connected with the accounting department for something over 20 years, and with the railroad for over 30 years.

Q. Have you prepared an exhibit from the standpoint of the Seaboard Air Line Railway dealing with statistics of operation in the Florida peninsula as compared with the rest of the system?

A. I have.

Mr. Gwathmey: May we ask that this exhibit be identified, Mr. Chairman?

Commr. Aitchison: No. 205.

(Exhibit 205, Witness Wimmer, marked for identification.)

By Mr. Gwathmey:

Q. Mr. Wimmer, will you proceed to describe this exhibit, and tell what it shows?

A. My Exhibit No. 205 consists of a title page and six [fol. 4793] pages, numbered 1 to 6. The first section of the exhibit, pages 1 to 4, inclusive, deals with statistics of freight train operations of the Seaboard Air Line, and shows the disabilities of operations on the north and south Florida operating divisions.

Pages 5 and 6 of my exhibit show property investment, cash, materials and supplies; condensed net railway operating income account and rate of return for principal Class I roads operating in the Florida peninsula; Class I roads in southern regions; and Class I roads in Eastern District, including Pocahontas region for certain years between 1923 and 1941.

Before discussing pages 1 to 4 of my exhibit, I would like to make a few observations. The Seaboard Air Line Railway is comprised of six operating divisions. Each of these divisions has its own division auditor and all disbursements arising on the divisions are audited in the accounts by the division auditors; additionally, all operating statistics pertaining to the operations of the divisions are separately compiled. Two of the Seaboard Air Line operating divisions, the North Florida and the South Florida Divisions, lie almost entirely within the State of Florida. Of the 1,609.15 miles comprising the North Florida and South Florida Divisions, only 15.66 miles are outside of the State of Florida; that mileage is a part of the line extending northward from Tallahassee, Florida, to Bainbridge, Georgia.

As heretofore stated, the Seaboard maintains operating [fol. 4794] statistics separately for each operating division and on page 1, I have compared the miles operated and the traffic density of the North and South Florida Divisions with the Seaboard System.

On pages 2 to 4, inclusive, of my exhibit, I have shown the principal statistics for freight train operations on the North and South Florida Divisions as contrasted with freight train operations on the balance of the Seaboard System. These comparisons are shown for the years 1929, 1932, 1936, 1938 to 1941, inclusive, and for the first seven months of 1942. The years I have used include the last good railroad year prior to the depression, two years during the depression period, the last four full years, and the first seven months of 942.

The comparisons shown on the exhibit are self-explanatory; however, for the purpose of illustration I will comment on some of these comparisons.

Item 1, page 1, shows that in 1929 the mileage of the North and South Florida Divisions combined was 39.27 per cent of the total system mileage operated at the close of the year. In 1941 the mileage of these two divisions was 37.36 per cent of the system mileage.

Item 2 shows that the North and South Florida Divisions contributed 23.28 per cent of the gross ton miles in freight service for the year 1929, and 23.58 per cent of the total [fol. 4795] gross ton miles in freight service for the year 1941.

Item 3 shows that in 1929 the North and South Florida Divisions contributed 24.15 per cent of the net ton miles in freight service and 23.42 per cent for the year 1941.

Item 4 shows that by using revenue ton miles in freight service, the North and South Florida Divisions for 1929 contributed 24.77 per cent of the total and for 1941, 22.36 per cent.

It seems appropriate to here point out that while the miles of road operated on the North and South Florida Divisions constitutes approximately 37 per cent of the total system miles as of December 31, 1941, the per cent of the system traffic contributed by these divisions, whether measured by gross ton miles, net ton miles, or revenue ton miles, is only approximately 23 per cent of the total traffic handled by the system.

I will now discuss item 5 on page 3 which shows that the traffic density of the North and South Florida Divisions for the year 1929, measured in gross ton miles per mile of road operated at close of year was only 46.94 per cent of the density of the balance of the system and in the year 1941, 51.75 per cent of the density of the balance of the system.

Item 6 compares the traffic density per mile of road operated at close of year on basis of revenue ton miles and shows that for the year 1929 the density on the North and [fol. 4796] South Florida Divisions was only 50.92 per cent of the balance of the system, and for the year 1941 only 48.29 per cent of the balance of the system.

Item 7, Freight Train Load Gross, shows that lighter trains on the average are run on the North and South Florida Divisions than on the remainder of the system. In 1929 the trains on the North and South Florida Divisions were only 83.87 per cent as heavy as on the balance of the system, and for the year 1941 85.97 per cent as heavy.

Item 8 of this exhibit shows the average train loading of revenue and non-revenue freight. In 1929 the trains on the North and South Florida Divisions were only loaded 88.08 per cent as heavy as on the balance of the system and for the year 1941 85.17 per cent as heavy.

Item 9 on page 3 shows the freight train load of revenue freight which is the pay load and is the real significant statistic for train loading. In 1929 the average revenue load on the North and South Florida Divisions was 90.96 per cent of the balance of the system; however, this per cent has decreased to 80.32 per cent in 1941.

Now, in order to show how operating costs are affected by the lower traffic density and lighter train loads in Florida, Item 10 compares crew wages per 1000 net ton miles on the North and South Florida Divisions with the balance of the system. It will be noted that in 1929 the crew wages, [fol. 4797] which are wages paid to crews operating freight trains, for the North and South Florida Divisions, were 32.43 per cent more than for the balance of the system. For the year 1941 the crew wages on the North and South Florida Divisions were 29.58 per cent greater than on the balance of the system.

Item 11 shows crew wages per 1000 revenue ton miles. It will be noted that in 1929 on this basis the cost on the North and South Florida Divisions was 27.91 per cent more than for the balance of the system and in 1941 the cost was 38.27 per cent more than for the balance of the system.

Item 12 of this exhibit shows cost of fuel per 1000 net ton miles. In 1929 the cost on the North and South Florida Divisions was 94.64 per cent of the balance of the system and for the year 1941 it was 106.90 per cent of the balance of the system.

Item 13, page 4, measures fuel costs by revenue ton miles. The cost in 1929 on the North and South Florida Divisions was 92.31 per cent of the balance of the system and for the year 1941 it was 115.15 per cent of the balance of the system.

In connection with both Items 12 and 13 for all of the years shown on this exhibit, except for 1929, the fuel costs in Florida per unit of traffic were substantially greater than for the balance of the system.

The comparisons contained in my exhibit show that in the span of years from 1929 to 1942, freight train operations [fol. 4798] in Florida were substantially more costly than on the balance of the Seaboard System.

I will now discuss the ratios shown in next to the last column on pages 5 and 6 of my exhibit. These figures show how much of each dollar of revenue was converted into net railway operating income by the three Florida lines, the Southern Region and the Eastern District, including the Pocahontas Region.

In 1923 the three Florida roads were able to convert 17.85 cents of each dollar or revenue into net railway operating income, whereas comparative figures for the Southern Region and Eastern District were 16.04 cents and 14.86 cents respectively. In 1925 the three Florida roads ratio of 19.54 is slightly less than the ratio of 19.76 for the Southern Region and slightly more than the ratio of 18.15 for the Eastern District. In 1929 the three Florida lines ratio 17.70 was slightly greater than the Southern Region ratio of 17.29 but less than the Eastern District ratio of 20.34 by approximately 2½ per cent, which means that the Eastern lines were able to convert 2½ cents more of each dollar of revenue into net railway operating income. For the remaining years shown between 1931 and 1941, the ratio of net railway operating income to operating revenues for the three Florida lines is substantially less than that of either the Southern Region or Eastern District.

The last column on pages 5 and 6 shows rate of return for [fol. 4799] the three principal Class I railways operating in Florida, for the Southern Region and for the Eastern District, including the Pocahontas Region.

In 1923 the rate of return for the three Florida lines combined was 5 per cent, which is slightly more than the return for either the Southern Region or the Eastern District. It is likewise true that in 1925 the three Florida roads

showed a rate of return slightly greater than for the Southern Region or the Eastern District; however, for all remaining years shown on the statement, which begins with 1929 and ends with 1941, the rate of return earned by the three Florida lines in each of these years has been substantially less than that earned by either the Southern Region or the Eastern District.

Commr. Aitchison: Now, you have based that on the return on property investment, haven't you?

The Witness: Yes.

Commr. Aitchison: Did you pay any attention to the findings made by the Commission with respect to the valuation of Class I roads?

The Witness: No, sir. This is book investment, cash, materials and supplies.

Commr. Aitchison: You are aware that the Commission made findings with respect to the valuation of the roads in the Southern Region and in the Eastern District for some [fol. 4800] of these years.

The Witness: I understood that the Bureau of Valuation had submitted some figures, and that they had been used by the Cost Section.

Commr. Aitchison: I am talking about formal findings of value made by the Commission. If there were any such, you didn't pay any attention to them?

The Witness: I didn't pay any attention to them, no, sir.

Commr. Aitchison: All right.

By Mr. Gwathmey:

Q. Mr. Winimer, you have undertaken to show relative costs, Florida versus the rest of the South, in the case of the Seaboard Air Line Railway.

Now, in your opinion, would the corresponding costs for Florida versus the balance of the territory, apply equally in the case of the Atlantic Coast Line Railroad?

A. It is my opinion that it would, yes, sir.

Q. These two railroads pretty much serve the same general territory in Florida, do they not?

A. Yes, sir.

Q. And operate under substantially similar conditions?

A. They have substantially the same composition of traffic.

Chmn. Alldredge: Could I ask one question? What do you consider to be the significance of the book value of the railroad in bankruptcy?

The Witness: Well, I don't know. It is a value that [fol. 4801] represents investment. Whether it can be sustained or not, that is a different question.

Mr. Gwathmey: May we offer in — exhibit 205, Mr. Chairman, and ask that it be received.

Commr. Aitchison: Yes. Without objection it will be received.

(Exhibit 205, Witness Wimmer, received in evidence.)

Mr. Gwathmey: That is all with this witness.

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. Hillyer:

Q. Mr. Wimmer, on page 3 of your statement you state that the wages paid to crews operating freight trains in Florida are 32.43 per cent more than for the balance of the system.

Now, does that figure mean that you actually pay a man in a certain employ more for serving in the State of Florida than you do in other states?

A. No, sir.

Q. Now, how do you account for that difference?

A. Light traffic density. These comparisons are based upon traffic units.

Q. You mean then that it then applies on units of traffic and not wages of the crew.

A. My entire comparison has been made on units of traffic. [fol. 4802] Q. Will you state the method in which the Seaboard records are kept which enables you to make this separation between Florida traffic and the balance of your system?

A. This separation, as I explained in the beginning of my testimony, is for the North and South Florida Divisions, whose accounts are kept separately, on substantially all of these expenses arising on these divisions, which, of course, includes crew, wages and fuel.

Q. How do you arrive at your traffic units? Do you take all of the Florida intrastate traffic and assign that to the Northern Florida Division?

A. No, sir. They work separately by divisions.

Q. Where does your North Florida Division extend to?

A. The North Florida Division begins at Jacksonville. It extends in a westerly direction to River Junction and up to Bainbridge, Georgia from Tallahassee, and also includes a few branch lines on the west end of Florida. It also extends southward from Baldwin to Homestead, to Plant City and to Tampa, via the main line—the old main line, I might say. We have another line which extends from Waldo to Tampa, which is in the South Florida Division.

Q. Well, have you lumped your North and South Divisions in Florida in making these comparisons?

A. Absolutely, yes, sir.

Q. Is it your position then that the same rate level [fol. 4803] should apply on your North Florida Division as your South Florida Division?

A. I don't recall having testified about rates.

Q. Would you think that they should be different?

A. I would have to let a traffic man handle the rate question.

Q. Is there anything in your cost which would warrant making a different rate level for the North Florida Division and your South Florida Division?

A. Nothing that I know of. That is a rate matter beyond me.

Q. Do your traffic units used for your North and South Florida Divisions include all traffic into and out of Florida, for the hauls within Florida; for example, do they, your units of traffic, assigned to your Florida Divisions, include the proportion of the haul south of Jacksonville, on traffic coming from the Northern states?

A. No, it includes all of it that is handled in Florida on the Florida Divisions, North and South Florida Divisions; all of the traffic handled over those Divisions is included in my statistics.

Q. Does it include the traffic both originated and terminated in Florida for the hauls south of the Jacksonville-River Junction line, or all within the State of Florida?

A. I cannot answer that question because our operating divisions are not entirely within Florida. The North Florida Division has something like 15 miles outside of the [fol. 4804] State of Florida, but I think the question you

wanted me to answer is, have I included in the North and South Florida Divisions all traffic whether it comes from without the state or is handled within the state. If that is the question, the answer is yes.

Q. I was speaking of expense up to that time. How do you separate your revenues between Florida traffic and other traffic?

A. Substantially a mileage pro rate, except the intrastate in Florida. There are some adjustments made for Florida arbitraries. That is not substantial, though, I don't think.

Q. Your revenue figures on the fourth page here, for the separation for Florida, are they made on an actual basis or a theoretical basis?

A. I don't believe I understand when you say the revenue figures come in.

Q. On page of 4 of your statement you say that on dollar revenue any net railway operating income is converted into—or, you show you convert 17.85 cents of each dollar of revenue into net railway operating income.

A. Mr. Hillyer, those figures are system figures.

Q. Is there any method of making an actual separation on actual traffic or revenue between Florida and non-Florida traffic; according to your figures?

A. You mean, do we make that separation?

Q. I mean, have you the actual separation, yes, upon the [fol. 4805] actual billing.

A. No, we don't have.

Q. How is it arrived at? I am asking you about the revenue now.

A. I am afraid I don't understand your question. You refer to page 4 of my statement, or page 5? Page 5 refers to the Seaboard System's revenues and not to Florida revenue.

Q. I was speaking of page 4, where you refer to so much of each dollar of revenue converted into net railway operating income.

A. That is also for the system, on page 4.

Q. Have you made any separation of that figure between Florida and your system?

A. No, sir.

Q. Then you don't know what ratio your revenue bears to your expense, in Florida?

A. No, sir.

Mr. Hillyer: All right. That is all.

Mr. Smelker: I have one question for clarification, Mr. Wimmer.

By Mr. Smelker:

Q. Mr. Wimmer, will you turn to page 3 of your exhibit, the last two items, 11 and 12, and will you state whether or not the cost includes the expense of origin switching, which you have designated there, because of crew wages and cost of fuel?

A. Well, all coal that we receive and carry into Florida [fol. 4806] is received from Foreign lines, and I do not believe we have any expense where we have foreign line switching involved. We do have a foreign line freight charge.

Q. That is not the question. Is there any yard switching included in the cost you have shown in items 11 and 12?

A. No, sir. This is the coal cost and the tipple charges, but no transportation.

Q. Now, talking about crew wages.

A. Yes, sir.

Q. Item 11, headed "Crew Wages", does any of that expense include origin or destination switching?

A. No, sir. This is crew wages paid to freight train crews.

Q. Line haul traffic?

A. Yes, sir.

Q. Is train switching expense left out?

A. Well, if there was any train movement by the crews on the trains that handled the coal, it would not be eliminated, but I don't know of any switching for the handling of coal.

Q. We are talking about coal especially.

A. I understand, crew wages.

Q. Crew wages.

A. I beg your pardon. No, that is the total wages paid train crews.

Q. And does include or does not include the yard switching.

A. It does not include train switching.

[fol. 4807] Q. It does not include yard switching either?

A. No, sir.

Q. How do you eliminate the train switching?

A. We receive monthly reports, or there are monthly reports made available to us showing the crew wages paid freight crews in train service.

Commr. Aitchison: You will have to talk louder.

The Witness: I am sorry, but I am so hoarse.

By Mr. Smelker:

Q. In what manner do you make this separation; on mileage pro rate or hour pro rate?

A. It is hours, as the original basis, and reduced to miles.

Commr. Aitchison: Is that all?

Mr. Smelker: We are not quite clear as to what accounts we find these figures.

The Witness: These figures.

By Mr. Smelker:

Q. Yes. How do you get the figure of $1.16, for instance, in '29, item 11, on page 3?

A. Well, we have an accumulation of those from the work sheets and it is the ton miles divided into the total crew wages and that gives you the average cost. I have not included in this the total crew wages that we used.

Q. What account do you use for crew wages, then?

A. In the classification?

Q. Yes.

A. You mean in the balance sheet.

[fol. 4808] Q. Yes?

A. Well, the trainmen.

Q. Yard crew and train expense.

A. $3.92 and $4.01.

Q. And other expenses?

A. Yes.

Mr. Smelker: That is all.

Chmn. Alldredge: I believe you stated that you assigned or allocated the freight revenues to those two Florida Divisions on some sort of a mileage pro rate.

The Witness: In the state report, that is the report to the Florida State Commission, the Florida revenue, the Florida proportion of the revenue is assigned on substantially a mileage pro rate, except the intrastate revenue.

Chmn. Alldredge: Now, can you tell me whether or not in assigning your through interstate revenue to those two Florida Divisions, you first grouped them or credit them with the full Florida arbitrary, and then pro rate the balance?

The Witness: I would not say. I would like to say that in the beginning we did not credit those two Florida Divisions. The revenue is credited to the state and not to the two Divisions. There is some other mileage that is not on these two divisions—some other mileage in Florida that is not on these two divisions. It is not substantial, but there is some other mileage.

[fol. 4809] Chmn. Alldredge: I am trying to find out whether you pro rate the arbitrary so that mileage outside of the state would get the benefit of it or do you credit it all to the Florida mileage?

The Witness: We endeavor to credit it to Florida.

Chmn. Alldredge: All of it?

The Witness: Yes, sir.

Chmn. Alldredge: Now, on business that you interchange with other carriers in Florida, do you credit the full amount of these divisions accruing on those Florida lines to those lines?

The Witness: Yes, sir.

Chmn. Alldredge: Is that the way you do it?

The Witness: Yes.

Chmn. Alldredge: And then on through business over the Seaboard System, you first credit to those Florida lines the full amount of the arbitraries and then you pro rate the balance on a mileage basis?

The Witness: I won't say the full amount of the arbitraries, because we do not actually determine them, but there is a formula applied to it where we try to give weight to the full arbitrary. The balance of the revenue is on a mileage pro rate, yes, sir.

Chmn. Alldredge: Do you make any allowance for terminal services which might be included in the rate, or do you [fol. 4810] simply observe a freight mileage pro rate?

The Witness: Freight mileage.

Commr. Aitchison: Do you have the formula which is used as the basis for this proportion?

The Witness: I am not sure that I can give it to you accurately out of my head, Mr. Commissioner.

Commr. Aitchison: It is being used, however, by your assistants in making these calculations?

The Witness: Yes, sir.

Commr. Aitchison: Would you mind explaining that for the record?

The Witness: All right, sir.

Commr. Aitchison: Anything further for this witness? Apparently not. You are excused.

(Witness excused.)

Mr. Gwathmey: Shall I call another witness for this afternoon?

Commr. Aitchison: We will suspend at this time, but I will say that due to another engagement that the Division has in the morning, we will have to adjourn until ten o'clock tomorrow morning. But we hope to run longer hours for the next few days.

(Thereupon, at 4:45 o'clock p. m., a recess was taken until March 30, 1943, at 10 o'clock a. m.)

[fols. 4811-4812a] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28300

Class Rate Investigation, 1939

Docket No. 28310

Consolidated Freight Classification

Main Hearing Room,
Interstate Commerce Commission Bldg.,
Washington, D. C.,
March 30, 1943.

Met, pursuant to adjournment, at 10 o'clock a. m.

Before Division 2 of the Commission

Hon. Clyde B. Aitchison (Presiding).

Hon. J. Haden Alldredge (Chairman of the Commission).

Hon. Walter M. Splawn and a Cooperating Committee of the National Association of Railway and Utilities Commissioners, represented by:

Mr. W. H. Scott, of The Public Service Commission of South Carolina.

Mr. George McConnaughey, Public Utilities Commission of Ohio.

Mr. C. L. Doherty, South Dakota Public Utilities Commission.

Present: Paul O. Carter, Examiner; W. J. Koebel, Examiner; T. L. Haden, Examiner; W. U. Hardie, Director, Bureau of Traffic; J. J. Murphy, Consultant.

Appearances:

As heretofore noted, and Charles T. Abeles, Seaboard Airline Railway Building, Norfolk, Va., appearing for Seaboard Airline Ry. Receivers.

[fol. 4813] Proceedings

Commr. Aitchison: You may proceed.

Mr. Gwathmey: I will call Mr. Ormond.

Mr. Grey: Mr. Chairman, yesterday I reserved cross examination of Mr. Weeks, and I find that I have no cross examination.

Commr. Aitchison: Very well.

Lewis F. Ormond was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. You are Mr. Lewis F. Ormond, and you testified previously at the Columbus hearing, did you not?

A. At the Indianapolis hearing.

Q. Mr. Ormond, I believe your official position with the Atlantic Coast Line Railroad Company has changed since the time when you testified before. Is that correct?

A. That is correct, sir.

Q. What is your present position?

A. As comptroller.

Q. You are now comptroller of the Atlantic Coast Line Railroad Company?

A. Yes, sir.

Q. Have you prepared and distributed one exhibit which you desire to offer at this time?

A. Yes, sir. It consists of four typed pages with a cover [fol. 4814] sheet and a back.

Mr. Gwathmey: Mr. Chairman, may we have it identified?

Commr. Aitchison: That will be Exhibit 206.

(Exhibit 206, Witness Ormond, marked for identification.)

By Mr. Gwathmey:

Q. Please proceed, Mr. Ormond, to explain briefly what you have shown in this exhibit.

A. This Exhibit 206 is directed toward Witness Saunders' Exhibit No. 87, which Mr. Saunders said in his testimony at pages 1632 and 1633 of the record was introduced at the request of the Florida Railroad Commission.

The first sheet of my exhibit is simply a reproduction of Mr. Saunders' exhibit and is put here for ready reference.

In considering Mr. Saunders' exhibit it became apparent that the point that he was striving to make was the heavy earnings of the three principal Florida lines in the 1942 period that he shows on his exhibit, shown as the seven months of 1942.

He demonstrated thos- heavy earnings by developing the rate of return represented by net railway operating income on the rate-making value as found by the Commission for each of the railroads for the purposes of this case, adjusting——

Q. Pardon me. You didn't mean to say, did you, that the Commission has found any such values for the purposes of this case?

[fol. 4815] A. No, I beg your pardon. It was a value that was produced by the Bureau of Valuation and has been used in this case. It does not represent a Commission finding, as I understand it.

Mr. Saunders adjusted that value by adding to or taking from the base figure as of December 31, 1939, certain amounts which he assigned to each of the years appearing on the exhibit, namely, the years 1937 through 1941.

I have been unable to check his additions and subtractions from the base figure but I don't think it is of a great deal of importance whether or not they are checked.

He doesn't seem to have done anything with his changes in the year 1939, if the amount set out in the columns for the other years truly represent the property changes occurring in those years, but as I say, I do not consider that as — a great deal of importance.

The second sheet of the Exhibit No. 206, looking at the data at the right hand part of the exhibit, is more or less a reproduction of Mr. Saunders' data for the Atlantic Coast Line, except that I have developed an average for the five years from 1937 to 1941.

You will observe that the average rate of return represented by net railway operating income applied to the Bureau of Valuation's value, as adjusted by Mr. Saunders, is 2.49 per cent for the five years collectively.

The next sheet is a similar statement for the Seaboard [fol. 4816] Air Line, and here it develops that the average rate of return for the five years 1937 to 1941 is 2.44 per cent.

The fourth sheet is similar in characteristics and relates to the Florida East Coast and here the average rate of return for the five year period is 1.97 per cent.

I have developed that average in order to give some idea of the level of the return, even when applied to the value which the Bureau of Valuation has produced during the five previous years in order to make the point, if it is a point, that the heavy return in the seven months period of 1942, to which Mr. Saunders directs attention and read into the record in his testimony, is an abnormal thing. I think we all know it is abnormal. It has no relationship to the past, as this statement clearly shows, and we are all perfectly confident that it has no relationship to the future.

I do not think it should have any weight in a case involving the promulgation of rates——

Commr. Aitchison (Interposing): Well, I understand Mr. McCollester always objects to witnesses answering questions of how much weight should be attached in a rate-making proceeding.

Mr. Gwathmey: Leave that to the Commission, but incidentally, Mr. Chairman, may I call your attention in that

connection to the recent observations of the Supreme Court of the United States in the Milwaukee Reorganization Case [fol. 4817] with reference to present day earnings as a guide?

Proceed, Mr. Ormond.

The Witness: My purpose in referring to the year 1942, and making the remark I made, is that it is the point Mr. Saunders made that the year 1942 showed such excessive earnings for the Florida Railroads, and I think there is no use in whipping a dead donkey; I think it is obvious to all of us that that is an abnormal condition.

Commr. Aitchison: If you were to complete the page that you have just been referring to of the Seaboard Air Line, and instead of the seven months of 1942 showing $16,485,264 net railway operating income adjusted, were to insert a figure which compares with the five preceding months, that is on an annual basis, the figures you would insert would be $30,445,971, would it not?

The Witness: The Seaboard contends that it would be $33,945,971. There is an adjustment in regard to taxes, tax accruals, that is in controversy.

If we used the figure to which the Commission adjusted the Seaboard's returns, we would use the figure you have referred to, yes, sir.

That would represent a return on the Bureau of Valuation value of 14.79 per cent in order to complete the statement all the way, and the similar figure for the Coast Line would represent a return of 9.71 per cent, and for the [fol. 4818] Florida East Coast 15.39 per cent.

I think those large amounts and large percentage rates of return merely emphasize the point which I am striving to make in connection with these returns for the year 1942.

If you will look in the left hand section of sheet 2 of my exhibit, and using the Atlantic Coast Line for illustration, I will explain what I am striving to show there.

The first figure is the cost of reproduction less depreciation, excluding lands and rights as of January 1, 1937, for the Atlantic Coast Line, which was produced and used by the Commission, I believe, in Ex Parte 123, Exhibit 68.

Immediately below is the cost of reproduction, less depreciation, except land and rights as of January 1, 1940, both of those being for the Atlantic Coast Line, which was produced and used in Ex Parte 148, Exhibit A-11. These are both figures that have been used in proceedings, and

over which the railroad had no control, and in which it had no participation.

Comparing these two figures it is obvious that between January 1, 1937 and January 1, 1940 there has been a decrease in the valuation of $11,194,137.

To that I add the net increase in investment represented by carrier expenditures, less retirements, in the three years that intervened between the dates that I have shown, amounting to $2,485,800, and thus produce a decrease- net [fol. 4819] between the two dates of $13,679,937.

We recognize that a part of that increase is explained by depreciation on equipment, which we have accounted for, amounting to $6,184,410.

That leaves a decrease which is unexplained so far as this exhibit is concerned of $7,495,527, or an average of $2,498,509 per annum of three years.

Sheet 3 for the Seaboard is worked in exactly the same way and it produces an unexplained decrease of $24,524,-156, or an average decrease per annum of $8,174,719.

Sheet 4 for the Florida East Coast produces an unexplained decrease of $13,105,751, or an average per annum of $4,368,584.

Let's consider those decreases here. In the first place, it is rather peculiar to find the decrease for the Florida East Coast, a comparatively small line, greater than for the Atlantic Coast Line.

Commr. Aitchison: Mr. Gwathmey, you had an opportunity to query our representative about this if you desired further explanation. Why should we have to speculate as to why the Bureau made the reductions?

Mr. Gwathmey: Well, your Honor, I don't understand that Mr. Ormond is dealing directly with that feature.

Commr. Aitchison: I thought he was.

Mr. Gwathmey: But to whatever extent he is dealing with it, I think you probably have gathered by this time [fol. 4820] that the railroads didn't at all agree with the valuation figures which were furnished by the Commission, and we have heretofore in this case undertaken to point out certain objections to them, that we think are proper.

Mr. Bell: What do you mean, "furnished by the Commission"?

Mr. Gwathmey: By the Bureau.

Mr. Bell: Oh, the Bureau of Valuation?

Mr. Gwathmey: Yes.

Commr. Aitchison: They were introduced, Mr. Bell, by the Commission. The Commission itself tendered the exhibit and there was no objection.

Mr. Bell: Are you speaking of this case?

Commr. Aitchison: I am speaking of this case.

Mr. Gwathmey: May Mr. Ormond finish his statement?

Commr. Aitchison: Proceed.

By Mr. Gwathmey:

Q. Go ahead.

A. I was calling attention to the wide variation between the unexplained decreases in the case of the three railroads involved.

The Coast Line and the Seaboard are very similar to the same first class set-up, and there is not a great deal of difference in the miles of road which they operate. That is one point I want to make in connection with these matters.

The second one is this; here I get to the true purpose of the comparisons.

[fol. 4821] Unquestionably some part of those unexplained decreases (and a substantial part, I should say, in the case of the Coast Line) is represented by depreciation on road property which has been applied as a reduction in the interim by the Bureau of Valuation. I don't know how much that is, and I don't think it is particularly important to ascertain.

The main point is that that depreciation on road property, which has been applied as a reduction of the values which Mr. Saunders uses, has not been applied as a reduction of net railway operating income which he uses in the development of the return which he shows.

If our value is going to be cut down by depreciation (and in using the word "our" I am referring to the three roads collectively) and we are to be charged with determining this rate of return or that rate of return on the value this reduced, we feel that net railway operating income should be reduced to the extent of the depreciation which has been applied to reduce value.

Commr. Aitchison: Have you any statement showing the amount which was charged during the periods that you have shown in your exhibit here to depreciation of way and

structures and equipment and to amortization of defense projects?

The Witness: The depreciation of equipment, Mr. Chairman, is shown on the exhibit.

[fol. 4822] Commr. Aitchison: This exhibit?

The Witness: Yes, sir, at the left.

In the case of the Coast Line it amounted to $6,184,410, and that figure has been taken out before developing what I have referred to as the unexplained decrease.

Mr. Gwathmey: Line 6, Mr. Chairman, in the left hand corner of the exhibit.

The Witness (Continuing): There have been no amounts charged in the years 1937, 1938 and 1939, which is the period with which I am dealing, to depreciation of way by any of these roads, and neither did any of them charge in that period anything for amortization of defense facilities.

Commr. Aitchison: If that had been charged, it would have pulled down your average rate of return for these years shown, I believe, would it not?

The Witness: Yes, sir, if it had been charged.

Commr. Aitchison: How about the year 1942 with respect to the amortization of defense projects?

The Witness: There was a substantial sum charged in the accounts of the Coast Line and the Seaboard for amortization of defense projects, in the year 1942, and there was no depreciation in that year.

Chmn. Alldredge: Was that the first year you charged a sum for amortization?

The Witness: That was the first year it was permissible.

[fol. 4823] Chmn. Alldredge: 1942?

The Witness: Yes, sir.

Commr. Aitchison: Are you certain of that?

The Witness: I believe it was made optional in 1941, but I am not quite sure of that. I would hesitate to answer.

Chmn. Alldredge: Was that on a five year period?

The Witness: Over a period of 60 months, yes, sir.

Chmn. Alldredge: Sir?

The Witness: 60 months, or five years.

Commr. Aitchison: As a matter of fact, there was quite a considerable sum that was charged to amortization of defense projects in the year 1941 by all of the Class I railroads.

The Witness: Taking them collectively, yes, sir, but there was none charged by the three railroads I am dealing with here.

Commr. Aitchison: That may be.

The Witness: Yes, sir.

Commr. Aitchison: But you said it was not permitted.

The Witness: I think it was made optional. I corrected that. It was made mandatory effective January 1, 1942.

Those are the only serious points I have to make in connection with this exhibit.

If you would reduce the net railway operating income of these years to the extent of depreciation on road, which [fol. 4824] must have been taken into consideration by the Bureau of Valuation, you would find that the rate of return which Mr. Saunders has shown, and which I have averaged, would be substantially reduced.

By Mr. Gwathmey:

Q. Does that complete your discussion of the exhibit?

A. Yes, sir.

Q. Mr. Ormond, in the course of the cross examination of the witness Donnell with reference to Exhibit 70, filed by Mr. Hinnant, which dealt with the ton miles of revenue freight per mile of road for Florida as compared with that for North Carolina for the year 1940, mention was made of the authority for the figures shown in that exhibit, being annual reports filed with the Florida Railroad Commission, and Mr. Donnell at page 1893 of the transcript said:

> "Mr. Hinnant and other Florida carrier representatives have testified in many previous cases that those figures bear no relation to the actual facts; that they are predicated on formulas and have no meaning whatever."

Are you familiar with the method in which the annual reports made by the Atlantic Coast Line Railroad to the Florida Commission are compiled?

A. Yes, sir.

Q. What have you to say as to the correctness of the figures as shown in those reports and in Mr. Hinnant's [fol. 4825] exhibit relating to the ton miles of revenue freight in Florida as compared with other states.

A. They are as exact as it is possible to produce.

We take every waybill representing a movement either wholly within the state or one within and without the state, in other words, intrastate and interstate, compute the miles of the shipment and compute the revenue ton miles for Florida on the basis of the actual movement of the shipment.

Q. When you come to consider operating expenses it is true, is it not, that the railroads have said that the formula which is used, and which was put out by the Florida Commission, is not accurate.

A. Exactly so.

Commr. Aitchison: Have you ever proposed a better one?

The Witness: No sir.

Chmn. Alldredge: You didn't want to furnish that information at all, did you?

The Witness: Absolutely not. A railroad system is not operated with regard to state lines and it can't be without a very material increase in the expense all up and down the lines.

Commr. Aitchison: As an expert statistician, if the Atlantic Coast Line were to be contesting an order of the Florida Railroad Commission which seriously affected freight rates, would you or would you not undertake to [fol. 4826] make the necessary separations to show whether or not the returns would be confiscatory, if instructed to do so?

The Witness: If I were instructed to do, of course I would endeavor to make them, but I would go at it with fear and trembling, because it is practically an impossibility so far as operating expenses are concerned to separate them on state lines.

Commr. Aitchison: Did you ever hear of the so-called Oliver formula?

The Witness: No, sir, I don't think I have ever seen it.

Commr. Aitchison: Have you ever investigated to see whether or not formulae have been devised which have been sustained and used by the Supreme Court of the United States on the basis of testing whether state rights were confiscatory or not?

Mr. Gwathmey: Mr. Chairman——

Commr. Aitchison: I want to test whether or not this gentleman is advised when he says that it is not a feasible thing to do.

The Witness: I mean no disrespect to the Supreme Court, to this honorable Commission, or to anybody else, but I nevertheless maintain the position that it is practically an impossibility to accurately separate operating expenses by state lines.

Commr. Aitchison: Would you say that it was impossible—[fol. 4827] practically impossible, I think is the phrase you used—to do it so as to yield a result on which you or your company would act in a matter of high moment to itself?

The Witness: If it was a matter of high moment, if the rates involved that it was proposed to be reduced were vitally important, we would do the best we could. We have done that in a number of other cases. In fact, we have done it in this case here, in making answer to Dr. Edwards' questionnaire we put it in to the best of our ability, but I certainly don't agree with it.

Commr. Aitchison: I was trying to get away a little bit from this lawsuit idea, and put it that if it was a matter of high moment to the Atlantic Coast Line to be able to tell what the expense of its operations in Florida was, so that it could take an action which affected it, would you or would you not feel that you could produce that figure so that the Atlantic Coast Line would be able to act upon it in this matter of high moment? I am not talking about a lawsuit.

The Witness: All right, sir, let me answer this way, and I hope it will be direct enough.

If the amount involved was sufficient—I said "practically impossible"—it is possible, of course, to separate the operating expenses at a state line. We could put a man on every train and an accountant on every train, and we could separate them, and therefore my answer to you is [fol. 4828] that if the amount at stake was large enough we could and would separate them, but it is not an economically practical thing to do.

Commr. Aitchison: Do you, in saying with respect to this Florida arbitrary, that it is not the practical thing to do to make this separation, do you or do you not take into consideration that we are virtually dealing with an annuity, the capitalizable value of which runs into many millions of dollars.

The Witness: Are you speaking of the Florida arbitrary on rates?

Commr. Aitchison: Yes.

The Witness: I am not informed particularly as to that, Mr. Chairman.

Commr. Aitchison: You haven't taken that into consideration in determining the feasibility of making that separation?

The Witness: I thought we were talking about the separation of operating expenses and not revenues.

Commr. Aitchison: That is what I am talking about. You have said you could separate the revenues.

The Witness: Your point is that in separating the expense we develop a net that would have a bearing on the value of the Florida arbitrary.

Commr. Aitchison: Yes.

Mr. Gwathmey: Mr. Chairman, may I recall to your mind [fol. 4829] the fact that yesterday Mr. Wimmer, a witness for the Seaboard, did make a separation of operating results, including costs on the Florida peninsula, as compared with the balance of the Seaboard System, and he was able to do that because of the somewhat peculiar method by which the accounts of the Seaboard are kept by divisions.

Commr. Aitchison: I take it, then, that in that case it was feasible.

Mr. Gwathmey: What is that?

Commr. Aitchison: It was feasible in that case.

Mr. Gwathmey: On account of the manner in which the Seaboard keeps its accounts, it was possible to make a separation between the Florida Divisions and the rest of the system.

Commr. Aitchison: Am I to understand feasibility depends upon the manner in which the carrier keeps its accounts?

Mr. Gwathmey: Yes, sir. They keep their operating expenses separate as to divisions, or rather I should more properly say, I think, they keep them separated as to mortgaged lines under an order of the Federal Court.

The Witness: And it is just a fortuitous circumstance that the divisions in the case of the Seaboard, with the exception of 16 miles overlap, 15 or 16, fall all within Florida.

Mr. Gwathmey: Shall I proceed, sir?

[fol. 4830] Commr. Aitchison: Yes.

Mr. Gwathmey: Mr. Chairman, may I ask that the exhibit that has been referred to and identified be received?

Commr. Aitchison: Without objection it is received.

(Exhibit 206, Witness Ormond received in evidence.)

Mr. Gwathmey: That is all.

Commr. Aitchison: Cross examine.

Mr. Bell: May I ask one question?

Commr. Aitchison: Yes, Mr. Bell.

Cross-examination.

By Mr. Bell:

Q. Do you know whether or not there were increases in the prices of material and the cost of labor entering into railroad construction January 1, 1940 over January 1, 1937?

A. I suspect that there were. I would not care to answer that definitely. I do not think they were important in those particular years.

Mr. Bell: That is all.

Commr. Aitchison: Cross examine.

Cross-examination.

By Mr. Hillyer:

Q. I would like to ask a few questions which are more or less trite, but merely to have the record clear.

The Atlantic Coast Line Railroad operates in what states?

A. Florida, Georgia, Alabama, North and South Carolina and Virginia.

[fol. 4831] Q. And in what states do the lines comprising the Atlantic Coast Line System operate?

A. The same ones that I have just given you.

Q. Is the L. and N. Railroad financially related to the Atlantic Coast Line Railroad?

A. We own a controlling interest in the stock of the L. and N.

Q. And the L. and N. covers other states in the South, other than those you have named?

A. I understand that it does, yes, sir.

Q. So that the Atlantic Coast Line Railroad and the L. and N, would you say, generally cover southern territory?

A. Yes.

Q. Is it not a fact that the Atlantic Coast Line Railroad is not only a Class I railroad, but also a Class A railroad?

A. I don't know what you mean by Class A, Mr. Hilyer.

Q. I mean is it not efficiently operated?

A. Yes, sir, I think it is.

Q. It has modern equipment.

A. Reasonably so.

Q. And gives excellent service?

A. We claim that we do.

Q. You agree then that it is a Class A as well as a Class I railroad.

A. I would have to know what a Class B was before I could answer that question.

[fol. 4832] Mr. Hillyer: That is all.

Commr. Aitchison: Anything further of this witness?

Mr. Smelker: I have one question, for clarification.

Commr. Aitchison: All right.

Cross examination.

By Mr. Smelker:

Q. Referring, for example, to page 2 of your exhibit, Mr. Ormond, would not some of the unexplained decreases in value shown in line 7 be accounted for by charges to profit and loss?

A. I don't see how they could be, sir.

Q. For example, Dr. Edwards testified at page 55 of his prepared statement that the Southern region charged profit and loss of $7,511,659 in 1939.

A. On account of what?

Q. On account of property retired but not accounted for by depreciation.

A. All retirements, Mr. Smelker, are taken into consideration in the figure of $2,485,800.

That is the net excess of additions and betterments over retirements, regardless of whether the retirements were charged to profit and loss or to operating expense, it is the net increase in the property investment account.

Mr. Smelker: That is all.

Commr. Aitchison: Here we have apples and oranges. Items 1 and 2 relate to costs of reproduction.

[fol. 4833] The Witness: Yes, sir.

Commr. Aitchison: Item 4, if the account is properly stated, goes back to original cost, does it not?

The Witness: No, sir, not necessarily. You mean to the extent that retirements are involved?

Commr. Aitchison: Yes, surely.

The Witness: Not necessarily. On an old railroad, such as the Coast Line, we don't know what the original cost of a large part of our property is, and under the commonly followed practice, we estimate that original cost when we don't know it as being equivalent to the cost of reproduction, as found by the Commission at the date of valuation.

Commr. Aitchison: Well, estimated original cost then instead of original cost?

The Witness: Yes, sir.

Mr. Bell: That is June 30, 1914.

The Witness: Our date of valuation is June 30, 1917.

Mr. Bell: I know, but your costs are all the same, irrespective of your date of valuation.

The Witness: The costs are based, as I understand it, on an average of prices in effect during the period from 1910 to 1914.

Commr. Aitchison: That is the cost you write out on.

The Witness: Yes, where our books do not reflect the actual cost.

[fol. 4834] Commr. Aitchison: Well, I just wanted to point out that you are deducting original cost, or an estimate of original cost, from cost of reproduction, and then because it doesn't value out, you say it is an unexplained decrease.

The Witness: I believe, Mr. Chairman, that I said that my point in developing that unexplained decrease was to bring out that unquestionably a part of it is roadway depreciation.

There probably are other factors besides roadway depreciation and besides the one you have mentioned that entered into it.

The multipliers used by the Bureau of Valuation in developing their value as of the two different dates quite probably were different.

Commr. Aitchison: You have no doubt at all that the multiplier which was used with respect to this retired property was considerably in excess of the charge-out amount, have you?

The Witness: I just don't know about that. I really don't know.

Commr. Aitchison: Well, those are all published by the Commission. The cost of reproduction unquestionably exceeds the estimate of original cost, doesn't it?

The Witness: The cost of reproduction, less depreciation, exceeds the original cost.

Commr. Aitchison: And therefore the cost of reproduction would too?

[fol. 4835] The Witness: Not in our case, sir.

Commr. Aitchison: The cost of reproduction exceeds the cost of reproduction less depreciation in your case then.

The Witness: The cost of reproduction, as estimated by the Commission at date of valuation is exceeded by both the estimated original cost and the final value. Let me state that differently. The final value is slightly exceeded by our book value. Those figures are in this record. I read them into the record in Indianapolis with respect to the Coast Line.

Commr. Aitchison: All right.

Mr. Hillyer. That will be all.

Commr. Aitchison: You may be excused.

(Witness excused.)

Mr. Gwathmey: Mr. Parsons, will you take the stand?

R. K. Parsons was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Will you give your name, your residence, and your official railroad position?

A. My name is R. K. Parsons. I am general freight agent of the Florida East Coast Railway (Scott M. Loftin and John W. Martin, Trustees), with headquarters at St. Augustine, Florida.

Commr. Aitchison: I don't see why it isn't copied in.

[fol. 4836] Mr. Wwathmey: Mr. Chairman——

Commr. Aitchison (Interposing:) Mr. Gwathmey, there are eight men on this Commission who are not here, and there are some 45 State Commissions not represented who are going to deal with this on the basis of the written record.

If it will help any, we will turn this over to an Examiner so that you will not be embarrassed, but it seems to me

that it is farsical for us to have to sit here and listen to a statement read which can just as well be put in in the manner indicated, and then discuss it fully on argument.

Mr. Gwathmey: Very well. I will be very glad to try to meet your Honor's wishes.

Commr. Aitchison: It will be copied in. If there is no objection this may be copied in as if the witness had given it orally.

The Witness: I have held an official position with the Florida East Coast Railway for the past nine years. Prior to that time, I was employed by the Atlantic Coast Line Railroad and spent nine years on various assignments in its freight traffic department. With the exception of a year and a half during the last world war, I have been regularly engaged in railroad traffic work since February, 1915.

I was admitted to practice before the Interstate Commerce Commission in April, 1935.

My duties with the Florida East Coast Railway require [fol. 4837] the study of the many rate adjustments and transportation conditions affecting the Florida East Coast Railway, as well as the preparation and presentation of matters affecting its interests before the Interstate Commerce Commission and the Florida Railroad Commission.

The Florida East Coast Railway Company is a railroad operating entirely within the State of Florida. Its rails run from Jacksonville in a due south direction to Florida City, Florida, a distance of 396 miles, with important branch line operating from New Smyrna, a point 125 miles south of Jacksonville, to Lake Harbor, Florida, in a general southwesterly direction. The branch line is 195 miles in length, serving an important vegetable producing area. It is the only Class I railroad operating in the State of Florida with all of its rail property located in that state.

Exhibit No. 92, filed by Witness Maurer at the hearing in these proceedings in Indianapolis in September, 1942, includes a statement of the class rates that would result from the application of the Docket 15879 Appendix E Class Rate scale between Miami, Florida, on the one hand, and representative points in Official Territory on the other hand.

Comparison is likewise made with the present published class rates between Miami, Florida, and those some Official Territory points. This statement is indicated by page M-67 of the exhibit referred to.

[fol. 4838] Witness Maurer stated that special studies of the class rates between Florida and Official Territory had been made by him on behalf of the Railroad Commission of the State of Florida (page 2 of his testimony).

Witness Maurer also stated, "My studies as to Peninsula of Florida form a basis for the position of the Florida interests in that the Florida arbitraries are no longer practical or justified and should be removed; and that whatever basis of class rates may be prescribed for the South or between the South and the North should include Florida as a part of the South". (Page 3 of his testimony). He also stated, "It is my opinion . . . that no higher level of class rates should prevail from the South, including Florida to the North, than applied within the North for like distances". (Page 8 of his testimony.)

It thus appears that one of the definite issues in this proceeding is the question whether the so-called Florida Peninsula arbitraries should be eliminated in connection with whatever basis of rates may be applied throughout other portions of Southern territory.

These arbitraries, as is well known, were originally prescribed by the Commission in Southern Class Rate Investigation, Docket 13494, the original decision in which was dated July 7, 1925. Several supplemental reports were thereafter issued and the rates finally became effective [fol. 4839] January 15, 1928.

In that case, as well as in other decisions in which the Commission has prescribed commodity rates to and from points in the Florida Peninsula and has allowed the so-called Florida Peninsula arbitraries, the Commission has invariably made it clear that the arbitraries were allowed by reasons of conditions peculiarly affecting railroad operations and traffic in the Peninsula and has stated that they were intended for the benefit of the Florida railroads, and should be allowed in dividing through rates before prorating the remainder of the through rate.

The Florida Railroads understand, of course, that the question of divisions is not an issue in this proceeding. Under the circumstances, however, they believe that attention should be directed specifically to the serious effect upon the revenues of these railroads if the proposals advocated by the Florida interests should be adopted by the Commission.

The annual reports of the Florida East Coast Railway for the years 1938 and 1939 show that of the tonnage originated by the Florida East Coast Railway, fruits and vegetables represented, for the two-year average, 34.8 per cent of the total tonnage originated while the percentage of gross freight revenue which accrued to the Florida East Coast Railway on its originated fruit and vegetable tonnage represented 36.34 per cent in 1938, and 24.57 per cent in 1939 [fol. 4840] of the total carload gross freight revenue of the Florida East Coast Railway for those years. The importance of this originated fruit and vegetable traffic, especially to the Florida East Coast Railway is, therefore, apparent.

The rates on vegetables from Florida to all destinations were prescribed by the Commission in the Southern Vegetable cases, Dockets 16939 and 25071, wherein the several varieties of vegetables were grouped, and rates made on certain fixed percentages of first class were prescribed for each such group. Although this decision resulted in serious reduction in revenue on the Florida vegetable movement, the carriers have subsequently, on account particularly of truck competition, made a general reduction in these rates approximately 15 per cent.

Should the basis now proposed by the Florida shipping interests be adopted, and should the Official Territory level of class rates be applied in the South, coupled with the elimination of Florida arbitraries, the resulting class rates to points in Official Territory would in most instances be substantially lower than the corresponding commodity rates on vegetables.

If the class rates should be reduced to the extent above described, the Florida railroads would inevitably be confronted with demands for reductions in the vegetable rates. These railroads had sufficiently disagreeable experience in [fol. 4841] the past where the commodity rates on vegetables were in some instances higher than class rates, growing out of the practice by shippers of routing via unnatural or unworkable routes, sometimes referred to as "monkey routes", in order to avoid the application of the higher commodity rates and obtain the benefit of the lower class rates.

The basis for divisions of the vegetable rates from Florida to Official Territory was fixed by the Commission in

Docket 24160, having been treated as presenting a special case, in which the prescribed basis of divisions was different from the basis prescribed for general application between the remainder of the South and Official territory. Without undertaking to set forth the proportions of the respective participating lines as thus prescribed, I wish to call attention to the fact that the adoption of the proposal here advanced by certain Florida interests, and an adherence to the divisional basis which the Commission has fixed would mean that the revenue on vegetables of the railroads south of the gateways, including the Florida peninsula railroads, would be heavily reduced, having in mind that fact that on this new basis of rates, the arbitraries, which are specifically fixed for the benefit of the Florida peninsula railroads, would be eliminated.

Based upon the 1938-1939 season we have estimated that on the Florida East Coast Railway vegetable origination [4842] alone, not to mention the vegetable traffic originated in Florida by the Atlantic Coast Line Railroad, and the Seaboard Air Line Railway, the annual loss to the southern railroads, if divided on the vegetable divisions fixed by the Commission, would be $321,423, and to the Florida East Coast Railway alone would be $127,030. The northern railroads would receive a revenue reduction of $81,096.

Should the Official level of class rates be applied and the equal factor class rate divisions under Docket 24160 be used, which, however, we would oppose by every means available to us, the resulting annual losses to the southern railroads would be $672,711, and to the Florida East Coast Railway alone $306,364, while the northern railroads would receive increased revenues of $270,192.

While no attempt has been made to estimate the amount of revenue which is derived from the Florida arbitraries as such, it cannot be doubted that the revenue losses which would result directly from the elimination of the arbitraries would be very substantial.

For example, the first class peninsula arbitrary from Jacksonville to Miami, is 23 cents per 100 pounds and the arbitraries on commodities, including fruits and vegetables, bear certain fixed percentages to first class. It can readily be seen, therefore, that a very large volume of tonnage and revenue is either directly or indirectly involved.

[fol. 4843] Speaking for the Florida railroads as a whole, we wish to emphasize that the adoption of the Florida ship-

ping interests' proposed adjustment, carrying with it the elimination of the arbitraries which were specifically allowed for the benefit of the Florida peninsula railroads, would be disastrous from a revenue standpoint. The Florida peninsula railroads would be compelled to use every available effort to have the division of class rates, which the Commission fixed in Docket 24160, reconsidered by the Commission.

Witness Maurer, in his testimony, stated that, in his opinion, the Commission intended the Florida arbitraries as a "temporary or transitional basis awaiting the outcome of the railroad and industrial expansion which was taking place within the State at that time.

I call attention that the statistical data extracted from the annual reports on file with the Interstate Commerce Commission, which show total operating revenues for the Florida East Coast Railway for the year 1928 of $13,874,723 and for 1940 of $10,748,838. In no year since 1928 have our total operating revenues been equal to thos- of 1928. These figures don't support the opinion held by Mr. Maurer that the outcome which he feels the Commission anticipated came about. On the contrary, the reverse is indicated from the total operating revenues shown.

Witness Maurer makes the statement that the class rate [fol. 4844] structure from Florida has been a very important factor in the rapid development of Florida's water-borne traffic. It is our confirmed opinion that the class rates have had nothing to do with these conditions.

Up to the time the I. C. C. Docket 13494 Class Rate Investigation, which prescribed the Florida peninsula arbitraries, was under consideration by the Commission, the United States Government harbor expenditures at the Florida East Coast ports had not been of substantial proportions.

Information obtained from the annual reports of the War Department, Chief of Engineers, U. S. Army, indicates that up to June 30, 1925, the United States Government had spent, in the development of the harbor at Miami, Florida, only $1,201,709.

The Federal Government had not spent any money in the improvement of the port at Port Everglades, Florida, nor the improvement of the port at Palm Beach, nor the deepening of the harbor at Fort Pierce up to that time. Only

$228,054 of Federal funds had up to that time been spent on the east coast canal from Jacksonville to Miami.

The latest report released by the District Engineers, U. S. Army, indicates that, up to June 30, 1941, the United States Government had spent, to develop the harbor at Miami, Florida, $7,873,529. Additionally, the City of Miami had used $5,492,892 of public funds to improve the harbor [fol. 4845] facilities. This harbor has a depth of 29.6 feet.

There is another deep water harbor only 23 miles north of Miami, Florida. It is Port Everglades, Florida. It has been developed entirely since 1926. To June 3, 1941, the Harbor District and the United States Federal Government spent $7,176,703. It was a harbor with water depth of 32.4 feet.

45 miles north of Port Everglades is still another deep water harbor, the Port of Palm Beach, which was developed at an expense to the Harbor District and the United States Government of $4,577,025. It has a depth of 20 feet.

55 miles north of the Port of Palm Beach is still another deep water harbor. This development, like the one at Port Everglades, has come about since 1926. This port was developed at an expense up to June 30, 1941, of $3,393,752. It has a depth of 24 feet.

It is pointed out that there is, within a 125 mile Florida east coast shore line, four deep water ports capable of accom-odating practically any craft in the coastwise service.

Additionally, vast sums have been expended on the East Coast Canal, known as the Florida Inland Navigation District. Official records of the Florida Inland Navigation District show that the sum of $12,178,055 has been devoted to making and keeping the avenue of transportation open. It has a minimum depth of 8 feet of water from Jacksonville to Miami.

Well in excess of the staggering sum of $41,575,054 has [fol. 4846] been spent on harbor and waterway developments along the east coast of Florida within the past 20 years.

Rebuttal facts respecting the Florida East Coast feature of the financial exhibit presented by Witness Saunders at the Indianapolis hearing, and to which was assigned Exhibit No. 87, are being presented by another Florida East Coast Railway witness, but I wish to state, in connection with that exhibit, that the revenue information shown with

respect to the Florida East Coast Railway for the first seven months of 1942 is susceptible of misinterpretation unless the circumstances incident to its accrual are treated with.

The normal southbound traffic of the Florida East Coast Railway was seriously retarded by the outbreak of the war and the revenue improvements since then — account of the Florida East Coast Railway Company are attributed entirely to traffic which will disappear with the termination of the war or with improved ocean shipping situation.

Indicative of the correctness of this observation, the Florida East Coast Railway originated only 1,595 carloads of citrus fruit during the first seven months of 1941. By reason of the temporary suspension of coastwise steamer service, the Florida East Coast Railway originated during the first seven months of 1942 (the period treated with by the Witness Saunders) 7,240 carloads of citrus. This unusual situation accounts for approximately one-half million [fol. 4847] dollars of the Florida East Coast Railway revenue improvement.

Since 95 per cent of the citrus fruit originated on the East Coast of Florida normally moves to the North Atlantic Seaboard territory, and for years prior to 1942 such proportion as the Florida East Coast Railway originated moved on extremely depressed rates, representing an exact equalization of the freight rates charged via truck-boat routes, there is small reason to feel that, with the return of the coastwise steamer lines, the Florida East Coast Railway normal situation with respect to this traffic would be any different than it was prior to the war.

The submarine situation since January, 1942, has caused the unnatural movement of Cuban raw sugar through Miami, Port of Palm Beach, and Port Everglades, Florida, ports served by the Florida East Coast Railway. Over 3,500 carloads destined to the East have been moved through these ports. In normal times, this traffic could not have been controlled except via all water routes and it accounted for approximately another half million dollars of Florida East Coast freight revenue improvement.

An unusual and purely war endeavor import movement of blackstrap molasses handled through the Florida ports since Pearl Harbor and destined for North Atlantic Seaboard alcohol manufacturing plants, and which normally moves from Cuba to North Atlantic Seaboard in tank steamers owned or operated by the alcohol manufacturing inter-

[fol. 4848] ests, has been responsible for a 1,405 tank car lot movement of good revenue traffic, which may not even recur during the present situation, and would most certainly disappear with the termination of war conditions.

Since January of this year, a number of military camps have been established on the East Coast of Florida, and the principal ones being Camp Griffith at Boca Raton, Florida, and Camp Murphy, near Stuart, Florida. The materials going into the construction of these two military camps has represented thus far this year 3,994 carloads. Even if, during peace times, these military camps should be continued, the heavy movement in which their construction has resulted would not be repeated and there is small likelihood that the camps would be continued except on a small scale with the termination of the war.

The practice of heavy troop concentrations within the State of Florida, involving as they do heavy movements of supplies, is generally known. Therefore, our passenger revenues have been greatly improved. During the first eight months of 1940, the Florida East Coast Railway revenue on export and import traffic handled via Port Everglades was only $282,007; for the first eight months of 1941 it was $404,824, while, for the reasons given, during the first eight-month period of 1942, the Florida East Coast freight revenue from export and *and* import via this port was [fol. 4849] $1,234,103.

For many years prior to the present war conditions, the tremendous petroleum products consumption was transported by tank steamers from the ports near the source of supply to Florida ports, and distribution from those ports was for short hauls, for which the railroads involved operated extremely depressed rates.

With the acquisition of the tankers by the Federal Government, as a result of the war activities, considerable impetus in long haul movements of petroleum products was brought about. The Florida East Coast Railway's freight revenue for the first eight months of 1941 produced by petroleum and its products was only $333,186, while for the first eight months of 1942, the freight revenue accruing from the handling of petroleum and its products was $586,144, roughly a quarter million dollar improvement. We have no reason to believe that we could ever hope to control, against the oil companies' ocean tanker service, the volume of gasoline and fuel oil movements to the East Coast

Port Cities where the principal population served by the Florida East Coast Railway is located. These facts deserve careful consideration in connection with the revenue information given by Witness Saunders as to the 1942 period.

Commr. Aitchison: Anything further?

Mr. Gwathmey: That is all from this witness.

[fol. 4850] Commr. Aitchison? Cross examine.

Cross-examination.

By Mr. Hilyer:

Q. Do I correctly understand from your statement it is your position that the Florida East Coast Railway, although now in a prosperous condition, is in a prosperous condition because of war conditions, elimination of border competition, and the increased traffic?

A. That is correct.

Q. And after the war you expect the conditions to return under which your railroad operated at a great disadvantage.

A. Or grow worse.

Q. Your line operates wholly within the State of Florida?

A. Entirely.

Q. And wholly within the strip of coast from Jacksonville to Miami, and south within a few miles of the Atlantic Ocean.

A. Except for a branch line, a 195 mile branch line, yes, sir.

Q. Does the intercoastal canal follow the length of your line from Jacksonville to Miami?

A. It does.

Q. Are there hard surfaced highways directly paralleling your main line?

A. There are.

Q. Do you have competition with the Seaboard Airline Railway from Jacksonville to Palm Beach and Miami?

A. Yes.

[fol. 4851] Q. You have all those competitive conditions to face in normal times, other than in war times?

A. That is true.

Q. In that respect, would you say that the Florida East Coast Railway is in a unique position as compared with other carriers?

A. We feel so, yes, sir.

Mr. Hillyer: That is all.
Commr. Aitchison: Any further cross examination?

(No response.)

Commr. Aitchison: Anything further, Mr. Gwathmey?
Mr. Gwathmey: No.
Commr. Aitchison: You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Yager, will you take the stand?

J. S. YAGER was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Will you give your name, residence, and railroad position?

A. My name is J. S. Yager. I am statistician of the Florida East Coast Railway Company, with headquarters at St. Augustine, Florida.

Q. Have you prepared for the purpose of this case an exhibit together with a written statement in explanation of the [fol. 4852] exhibit?

A. Yes, I have.

Q. Were they distributed at Columbus, Ohio?

A. Yes, sir, at the last hearing at Columbus.

Mr. Gwathmey: Mr. Chairman, following your Honor's suggestion, I will ask that the balance of the statement be copied into the record.

Commr. Aitchison: Is there any objection?

(No response.)

Commr. Aitchison: This may be done. The Exhibit will be numbered 207. Without objection Exhibit 207 is received in evidence.

(Exhibit 207, Witness Yager, received in evidence.)

The Witness: I have been in the service of the Florida East Coast Railway since 1926, previously having had some 19 years experience in railway accounting, valuation, operation, maintenance and statistical departments.

I began my work with the Chicago and Alton Railway at Kansas City, Missouri, during 1908, and, for a period of three years, was employed in the local agency and as chief yard clerk.

I then went with the Santa Fe Railway for two years on general accounts, being transferred to Chicago, where I worked for two years on special statistical studies.

[fol. 4853] I went with the Central of Georgia at Savannah, Georgia, in 1915, where I was employed for a period of 12 years; two years as valuation accountant, two years as traveling auditor, four years as statistician and four years as general yard master, coming to the Florida East Coast Railway in 1926.

During my service with the Florida East Coast I have been engaged continuously in analyzing operating, maintenance and traffic conditions as they exist on this railway system.

It is my purpose to present some facts in rebuttal of Mr. Saunders' Exhibit No. 87 and Mr. Donnell's Exhibit No. 93, and their testimony relating to these exhibits, especially as it applies to conditions existing on the Florida East Coast Railway.

It is obvious that where railroads operate in several states, difficulties in the assignment of revenue and expenses, etc., are presented. The Florida East Coast Railway is strictly a Florida carrier and all of its revenues, expenses and statistics are assigned direct. For this reason, there can be obtained an accurate picture of the Florida peninsula operations from a study of the factors which we will present.

We feel it necessary to offer an explanation in the clarification of Witness Saunders' Exhibit No. 87, dealing with rate of return on the so-called rate-making value as it applies to the conditions existing on the Florida East Coast Railway and particularly then to the figures introduced to [fol. 4854] cover the first seven months of the year 1942.

I will show later that normally, because of the extreme fluctuation in revenues on the Florida East Coast Railway, 52.8 per cent of the freight revenue and 63.6 per cent of the passenger revenue are earned during the first four months of the year. The valley is reached during July, August, September and October, beginning to pick up in November and December.

The method used by Mr. Saunders was to use seven-twelfths of his 1941 value, which spreads over the year equal division of this factor. Obviously this method would not be proper in determining a rate of return to cover the first seven-month period on a carrier under these conditions.

The Florida East Coast Railway has made no provision in the reports so far rendered to the Commission for income taxes which will surely accrue for the year 1942. This is estimated at between one million and a million, five hundred thousand. No consideration of this large and extremely important item was made by Witness Saunders.

The total value of $50,828,894, used by Witness Saunders, has been the subject of protest by the Florida East Coast Railway for many years. The book value of the Florida East Coast Railway as of December 31, 1941, was $85,736,-594, which is the value found at date of valuation by the Bureau of Valuation, Interstate Commerce Commission, plus subsequent additions and betterments and working [fol. 4855] capital. It, therefore, can be seen that the value used by Mr. Saunders is only 59.3 per cent of the total investment.

We do not believe the exhibit carries any support to the issues in this case. However, we present the above facts for clarification purposes.

Witness Donnell presented a series of graphs and figures covering sixteen pages, Exhibit No. 93, purporting to show changed conditions within the Peninsula of Florida since the differentials were prescribed and that the disabilities of operation upon which that decision was rendered no longer exist. Those conclusions are far from the facts and I will show that if the proper unit of comparisons was used, the picture is reversed and, on the contrary, the situation is aggravated since the period of 1921 to 1925, which I have used as a base for my comparisons.

Witness Donnell recites his studies of Florida's terrain and climate, the absence of show and ice, etc. I think it is obvious that these conditions have not undergone any change since the arbitrary was prescribed. It is pertinent to mention, and it is well known, that Florida is frequently visited with a severe cold wave which completely destroys the fruit and vegetable crop in various sections of the peninsula. Witness Donnell would have us believe that because of the topographical features, the cost of operations

in Florida were favorable as compared with conditions in other states.

[fol. 4856] The Florida East Coast Railway extends along the east coast of the State of Florida south of Latitude 30° north close to sounds or rivers; drainage is imperfect, accompanied by mean annual rainfall of 55 inches. In the Glades section of the Okeechobee Branch, it is not uncommon to suffer from 12 to 20 inches of rainfall within a period of 24 hours, completely inundating the entire section.

The railway is located close to and parallel with and across salt water. The salt atmosphere is extremely harmful to all metals used in construction and operation. In addition, the nearly vertical rays of the summer sun have adverse influence on all paints, more so than in other sections which are not exposed to the constant sunshine and high temperatures and high humidity prevaling in Florida. This condition also slows up laborers and other employees exposed to the extreme heat and humidity.

Marine borrers, such as the teredo, add greatly to the cost of maintaining pile trestles, most of which in the main line are driven in salt or brackish waters, which are more or less infected. Our records indicate an average life of about eleven years out of cr-osoted piling, in specific instances, which is, of course, extremely low in comparison with what is obtained on other roads more favorably located.

Another factor to be considered is the large expense necessary to restore the property after the visit of a tropical storm. This storm damage amounted to an average [fol. 4857] of approximately five hundred thousand dollars per storm for the years 1926, 1928, 1930, and 1935, and our records so show. The storm of September, 1935, wiped out a stretch of about 40 miles of the Key West extension, and caused the abandonment of the line from Florida City to Key West. We do not contend that other sections are entirely void of these storms, but we do know they occur more frequently in the peninsula of Florida than other sections.

I mention these facts to demonstrate in rebuttal of Witness Donnell's conclusions that the absence of grades in Florida denotes relatively lower operating costs, which fact we admit in part; however, we submit that the excessive maintenance costs greatly outweigh any lower operating costs within the peninsula of Florida.

At this point if offer my Exhibit No. 207, which I personally prepared, which consists of ten numbered pages. Page Y-1 is a statement showing the number of employees on the Florida East Coast Railway during the average of the years 1921-1925 and 1937-1941, inclusive, together with the average miles of line operated. The average employees per mile for the period 1921-25 being 6.24 and for the period 1937-41 being 3.81, as contrasted with 2.61 shown by Witness Donnell for the state as a whole.

Comparisons of average employees per line as between states are misleading unless the factors are shown as to [fol. 4858] the method of allocating employees performing system duties.

Statistics of Railways—Interstate Commerce Commission, Year 1940, Table 3, Road owned: Miles by states show 1,320 miles of Class II, Class III and non-operating companies, and 3,898 miles owned by Class I Railways—over 25 per cent of all the mileage in Florida is other than Class I railways.

The month of July was used by Witness Donnell when the traffic handled is at the minimum.

We believe the proper comparisons would be on the number of employees per dollar of railway operating revenue.

I have shown this calculation on the lower section of this schedule and for the prior average years 1921-25, the revenue per employee amounted to $3,784, while then for the average of the latest five-year period, 1937-41, amounted to $3,860. It will be observed that there is practically no change in this condition since the period on which the findings in Docket 13494, prescribing the Florida differential, was based.

Page Y-2 of my exhibit is a statement showing the railway tax accruals (excluding federal taxes) on the Florida East Coast Railway, together with the miles of line owned for the prior period average 1921-25 and for the average of the past five years 1937-41, inclusive. The tax dollars per mile for the prior period being 946 and for the period 1937-1941 were 903, as contrasted to 432 shown by Witness [fol. 4859] Donnell for the year 1939.

We do not subscribe to this method of comparing taxes per mile of line owned, and particularly when taxes per mile are compared by states. There are no standard formulae existing in the various states for determination of

value for tax purposes. Florida has one all of its own and 25 per cent of the total mileage is owned by other than Class I railroads. Yard tracks and sidings, together with second main track and all other main tracks are, of course, considered in establishing value of the road owned and the universal method of comparing the unit of taxes is by miles of all tracks owned. This method is employed in the lower section of the schedule and shows an entirely different result.

We submit that the consideration of comparison of taxes is of little value except as to the effect on net income, which I will treat with later.

Page Y-3 is a statement showing the tons of revenue freight carried, together with the tons of revenue freight originated on the Florida East Coast Railway for the period 1921-25, compared with the period 1937-41. I have separated this tonnage to show separately the tons of products of agriculture.

Statement was made by Witness Donnell that "Florida rail traffic has increased 112 per cent since 1921."

The figures shown on page Y-3 of my exhibit do not con- [fol. 4860] tain this information from the Florida East Coast Railway standpoint.

During the five years 1921-25 prior to prescribing the Florida differentials, the Florida East Coast Railway carried a total of 13,547,209 tons of revenue freight, while for the past five years 1937-41 the tons carried amounted to only 7,882,696, a decrease of 5,664,513 tons, or 42 per cent.

The witness goes into a recitation of traffic densities in explaining his study. Tons of freight originated nor tons of freight carried have no relation to traffic density. Before taking up the subject of traffic density, I wish to make further comment on this statement with relation to the freight originated where Witness Donnell stated "In freight originated and terminated, Florida has changed from a little state to a big state since 1921."

My exhibit certainly does not confirm this information, but on the contrary, the results are much worse today than they were at the time this feature was studied and the disabilities of the Florida peninsula recognized with the establishing of the existing differential.

During the five years preceding the Docket 13494 decisions, the Florida East Coast Railway originated 1,205,159

tons of products of agriculture, as compared with 1,175,410 during the latest five year period, a decrease of 29,749 tons, or 2.5 per cent.

For total tons of all freight originated during the five [fol. 4861] years preceding the decision, the Florida East Coast Railway originated 7,719,875 tons, as compared with 3,452,546 tons during the latest five year period, a decrease of 4,267,329 tons or 55.3 per cent.

It can, therefore, be seen that this condition has grown relatively worse since the differential was prescribed.

Freight traffic originated on the Florida East Coast Railway is principally agriculture, citrus fruit and vegetables being the leading farm products and constituting 34 per cent of the total tonnage originated as shown by this exhibit.

Page Y-4 of my exhibit is a statement showing traffic density of the Florida East Coast Railway, together with other Class I carriers operating in other differential territories, and totals of regions for the year ending December 31, 1940.

Statement was made that "The traffic density of Florida has shown a commensurately heavy increase over the density obtaining during the course of and prior to the hearings in Docket 13494."

Page Y-4 was prepared to show conclusively the relatively low traffic density on the Florida East Coast Railway in the peninsula of Florida.

It will be clearly observed that roads operating in other differential territories have a distinct advantage over the Florida East Coast, and in no instance is shown anywhere near the light density as exists on this railway. In prac- [fol. 4862] tically every other differential territory the roads enjoy from two to five times the density that exists on the Florida East Coast Railway. The totals of the regions are even more pronounced than the comparisons with individual differential roads.

The revenue net ton miles per mile of all tracks is shown for the total of the New England region as 617,407, as compared with 282,882 for the Florida East Coast Railway. Stated in another way, the traffic density of the New England region is 218 per cent of the density of the Florida East Coast Railway.

Page Y-5 shows similar information as to traffic density for the year ended December 31, 1928. Unfortunately we

did not have available this information for earlier years and have taken only the year at hand to show that there has been no heavy increase in 1940 over the earlier years. We have shown the decrease in tonnage handled over the prior years and can naturally expect a similar showing in the item of traffic density. It will be observed that for the year 1928 the traffic density of the total of the New England region was 244.5 per cent of the density on the Florida East Coast Railway.

Page Y-6 is a graph showing the seasonal fluctation in railway operating revenues (freight, passenger and total) for the average of the period 1921-25, comparing the average of the period 1937-1941.

[fol. 4863] Statement was made by Witness Donnell that "Traffic considered as a whole is not seasonal, but is fairly evenly distributed throughout the year."

This chart shows clearly the uneven distribution of the revenues and the period 1937-41 is more aggravated than was the period studied when the Commission reached its decision in Docket 13494 prescribing the Florida differentials.

The northbound perishable traffic moves during the period of high passenger travel, resulting in greatly distorted distribution during the first quarter of the year.

This chart plainly shows that there exists no even distribution of the railway operating revenues during the year on the Florida East Coast Railway.

Page Y-7 is a graph showing the unbalanced movement of freight traffic by months, January 1, 1937, to December 31, 1941, expressed in per cent of northbound net ton miles to total net ton miles.

It will be observed that the situation explained by Witness Donnell is far from the facts as to conditions existing on the Florida East Coast Railway.

The chart is self-explanatory; however, it is pointed out that the movement of freight net ton miles northbound reaches the peak during the first quarter, then drops to the low of about 10 per cent during the summer months.

This extreme fluctuation and unbalanced flow of traffic on [fol. 4864] the Florida East Coast Railway presents a difficult problem in controlling operating expenses to meet the incoming revenues and consists of one of our greatest disabilities of operation in the peninsula of Florida.

Page Y-8 is a statement showing the tons of revenue freight received from and delivered to connections comparing the Florida East Coast Railway with roads operating in other differential territories for the years ended December 31, 1940-41 and 1928-29.

It will be observed there is complete lack of this overhead tonnage on the Florida East Coast Railway, whereas roads situated in other differential territories do handle a substantial quantity of this overhead tonnage.

The tonnage listed as overhead on the Florida East Coast Railway for the latter years, approximately 3 per cent of the total tons carried consists of sugar and molasses from the Atlantaic Coast Line Railroad at Lake Harbor, Florida. The cane is produced on the Florida East Coast and ground at the mill located on the tracks of the Coast Line at Clewiston. Aside from this movement there is practically no overhead tonnage handled by the Florida East Coast Railway.

Page Y-9 is a statement showing the financial results of operations on the Florida East Coast Railway since the year 1937.

This statement shows the net railway operating income, total fixed charges, deficit under fixed charges, and the rate [fol. 4865] of return earned on the total property investment.

The total property investment consists of the value found by the Commission at the date of valuation, plus subsequent additions and betterments and working capital.

It will be observed that in no year since 1927 has the Florida East Coast Railway been able to earn its fixed charges and during the years 1932, 1933 and 1935 failed to meet the expenses, taxes and rents. Incidentally, these years are subsequent to the prescribing of the Florida differential.

Page Y-10 is a statement showing a comparison of conventional items of operating efficiency, Florida East Coast Railway with roads operating in other differential territories and with totals of different regions.

It will be observed that with respect to operating efficiency the Florida East Coast Railway showing is comparable with other individual roads and with the averages of the different regions.

The commodities handled by the Florida East Coast Railway are light loading and *of* consequence — is necessary to

restrict the cars per train to a maximum of 105. For this reason, we are able to obtain only approximately 40 per cent of the engine rating.

Particular attention is directed to the item of per cent loaded to total car miles for the Florida East Coast Railway is shown as 57.8 per cent. This situation clearly shows [fol. 4866] the one way traffic movement on the Florida East Coast Railway.

Mr. Gwathmey: The witness is offered for cross examination.

Commr. Aitchison: Cross examination?

(No response.)

Commr. Aitchison: You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Chairman, we have one more witness who will be examined by Mr. Abeles.

T. W. Roby was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Roby, please state your name and address.

A. T. W. Roby, valuation engineer, Seaboard Air Line Railway, Norfolk, Virginia.

Q. How long have you been employed by the Seaboard and what has been your education and experience?

A. I have been in the employ of the Seaboard for over 28 years or since April, 1914. I have devoted my entire time to valuation work and related matters and since 1918 have had entire charge of all phases of the valuation work.

I am a graduate *in* civil engineer, class of 1904 of the Virginia Military Institute, and a graduate of the Massachusetts Institute of Technology, class of 1907, in civil engineering.

[fol. 4867] From 1907 to 1911 I was in the employ of the McClintic-Marshall Construction Company of Pittsburgh (now a part of the Bethlehem Steel Company) in various capacities, including design, estimating, shop and erection work on steel bridges and buildings, and general contract work applicable to the latter.

From 1912 to 1914 I was employed as designing engineer by Henry Goldmark, consulting engineer of New York City, on design and construction work in remodeling and rebuilding the plant of the Canadian Locomotive Works at Kingston, Ontario, Canada.

Q. Are you familiar with the methods of the Interstate Commerce Commission in preparing elements of value used in determining rate making values, such as cost of reproduction estimates, original cost and present value of land and rights in connection with the Federal valuation of railroads?

A. I am thoroughly informed as to the Commission's past and present practices by virtue of the fact that I have had close contact with its Bureau of Valuation since the inception of valuation work, about 1914, including the field inventory, office calculations, pricing, inventories, the appraisal of land and hearings before the Examiners of the Commission.

I have also had charge of the preparation of returns to the Commission under Valuation Order 3 and other valuation orders reporting changes in units of property and costs thereof subsequent to basic valuation dates.

[fol. 4868] Q. What have you to say with respect to the figure of $189,325,000 as of December 31, 1939, used by Dr. Edwards in this case for the rate making value of the Sea-Board Air Line Railroad?

A. I should first like to state that the Seaboard has not been served with any tentative or final valuation reports of its properties as of December 31, 1939, by the Interstate Commerce Commission as required under Section 19-a of the Transportation Act.

On behalf of the Seaboard, I wish to state that we do not agree with or accept this value figure of $189,325,000 for rate making or any other purposes and we take exceptions to the rules, methods and practices used in its compilation.

Q. In your opinion, is this rate making value of $189,325,000 too low?

A. Yes.

Commr. Aitchison: The rest of this statement and all of the supporting data go to the question that you have just answered, do they not?

The Witness: Yes, sir.

Commr. Aitchison: Any objection to its being copied in?

Mr. Abeles: None at all.

Commr. Aitchison: And to the exhibit being given a number and received?

Mr. Gwathmey: There is an exhibit referred to in the [fol. 4869] testimony.

Commr. Aitchison: That will be referred to as Exhibit 208.

(Exhibit No. 208, Witness Roby, received in evidence.)

By Mr. Abeles:

Q. Why do you reach this conclusion?

A. I cannot, without further review and study of the underlying data, state all of my reasons but the principal ones are that (1) the 1939 "period" prices are too low, (2) too much has been deducted for depreciation, (3) the present value of land and rights is insufficient, (4) the amount included for working capital is exclusive of any cash whatsoever and some of the material and supplies on hand, and (5) the amount added for "going concern" or other elements of value is inadequate.

I should like in this connection to state some facts and make a few observations and comments with respect to the "elements of value" for the Seaboard Air Line Railway System as of December 31, 1939, used by Dr. Edwards in this case.

The "rate making values" and/or "elements of value" for the Seaboard System as of December 31, 1939 (sometimes referred to as January 1, 1940) are identical in (a) Docket No. 28190, New Automobiles in Interstate Commerce (b) Docket No. 28300, Class Rate Investigation and (c) Bureau of Statistics' Statement No. 4142.

The basic or primary valuation of the Seaboard System [fol. 4870] found by the Interstate Commerce Commission as of June 30, 1918, approximately aggregated $131,000,000 as the "rate making value" for total used property. The total value found as of December 31, 1939, is $189,325,000, an increase of $58,325,000.

During this 21½ year period, additions and betterments, including newly constructed and subsequently leased lines, aggregated a gross of approximately $187,300,000, which less retirements of about $69,600,000 makes a net increase of about $117,700,000.

As of January 1, 1937, the Commission, in Ex Parte 123, the 15 per cent Rate Case, found rate making value of

Class I railroads of the Southern Region to be $2,440,000,000 (226 I. C. C. 161), of which the Seaboard's proportion would be about $211,000,000, which is greater by $21,675,000 than the $189,325,000 rate making value as of December 31, 1939, used in this case, notwithstanding the fact that during this three year period the Seaboard expended for additions and betterments a gross of approximately $20,000,000 which was reduced by retirements of about $6,000,000 making a net increase in investment of about $14,000,000.

Q. Have you any comments on the several elements of value you have previous- mentioned?

A. Yes. My review of the valuation figures as found by the Commission for the Seaboard as of December 31, 1939, develops the following:

[fol. 4871] (1) Cost of reproduction new (except land and rights):

Price levels used in making the reproduction estimates underlying the value for the Seaboard System used by Dr. Edwards in this case are far too low not only as of today but even as of December 31, 1939. In support of this conclusion I have prepared a number of charts which I now offer as Exhibit No. 208. Although the charts are largely self-explanatory, I will briefly describe them.

The fifteen charts comprising this exhibit contrast for each of the larger road and equipment accounts the average yearly reproduction price levels of the Bureau of Valuation for the Southern Region during the years 1915-1941, inclusive, with the "Ceriod" price levels as of December 31, 1939, used by the Bureau to determine cost of reproduction new for the Seaboard Air Line Railway System.

The yearly reproduction price levels for the Southern Region, depicted by an irregular line across each chart, were obtained from the pamphlet entitled "Railroad Construction Indices," dated August 1, 1942, and compiled by the Engineering Section of the Bureau of Valuation of the Interstate Commerce Commission.

The 1939 "period" price level on each chart, depicted by a large dot, is the weighted average of the "multipliers" used by the Bureau of Valuation for the lines comprising the Seaboard Air Line Railway System. The price levels [fol. 4872] shown on each chart are constructed on the basis

of 1910-1914 as 100, and cover the period from 1915 to 1941, inclusive.

Each chart represents the averages for the items of property involved in that account.

A chart was prepared for each road and equipment account that amounted to over 2 per cent of the total cost of reproduction new of approximately $257,000,000 as of December 31, 1939, for Accounts 1 and 3-77, inclusive.

The accounts for which charts were prepared, listed on Sheet 1 of my Exhibit No. 208, aggregate approximately $230,000,000, or about 90 per cent of the above total.

The Bureau of Valuation in their "Statement of Methods" on page 3, Exhibit A-12, Ex Parte 148, states, "Period prices as of December 31, 0939 have been applied. They are based on a consideration of prices over a period of years."

So far as I am informed, the Interstate Commerce Commission throughout its valuation work has used period prices in determining the cost of reproduction new of railroad property.

The charts in my exhibit No. 208 show that during 1920 there was a sudden and sharp increase in the price level which the Commission in valuation and recapture cases stated was "disregarded as abnormal" (184 I. C. C. 289, 296, 297). There has not been, and indications are that there will not be, the sharp increases of prices during and immediately following the present war as occurred during [fol. 4873] and immediately following the World War I period.

It should be borne in mind in this connection that there are today in effect governmental regulations fixing ceiling prices for the purposes of preventing such abnormal increases as occurred in 1920, and that these ceilings apply directly or indirectly to practically all railroad materials such as lumber, steel, cement, locomotives, cars and machinery. We can, of course, expect, and have experienced substantial increases, but not so abrupt and so great rises as followed the last War.

Certainly, the Bureau price levels of 1939 and the years immediately preceding and following cannot be considered too high and, as just indicated, it would seem that consideration should be given to the higher prices of today in

establishing a rate base for use in the immediately future.

The charts in Exhibit No. 208, however, clearly show that the period price levels used in 1939 are, with a few exceptions, substantially lower than can be justified by the Bureau's Yearly Price Levels, particularly when the subsequent upward trend during 1940, 1941 and 1942 is taken into consideration. Instead, many of the price levels used by the Bureau apparently reach back into the depression period for support.

My conception of a rate making value as of December 31, 1939, is a value which will reflect as nearly as may be the level of prices over a period of years following December 31, 1939. To determine this future price level is the [fol. 4874] problem, and price levels prior to January 1, 1940, are only of use in so far as these might assist to determine the future price level. In other words, if we knew as of December 31, 1939, that price levels over a reasonable number of subsequent years *was* to be 150 compared to the 1910-1914 level used by the Bureau as a base equal to 100 then, in my opinion, the proper period price level for use as of December 31, 1939, would be 150, regardless of the fact that price levels over a reasonable number of years prior to January 1, 1940, might have been on the 135 level.

While this estimation of the future price level is generally difficult to determine, in this case we know the price levels of 1940, 1941 and for most of 1942 and find them to be for this 2½ year period much higher than the levels prevailing during 1939 and a reasonable number of years prior thereto. A glance at the charts will readily confirm this conclusion.

I draw your special attention to the charts for equipment accounts 51, 52, 53 and 54 and to road accounts 6, 8, 10, 16 and 20 which show that you must go back in most cases as far as 1935 or 1934 to find yearly price levels as low as the Bureau 1939 period price level for the Seaboard.

Q. I notice in the charts shown in your Exhibit No. 208 for Account 3, grading; Account 11, ballast; and Account 12, tracklaying and surfacing, that the Bureau's 1939 period price level is fairly close to their yearly price level [fol. 4875] for 1939, and for several years prior thereto, whereas in the other accounts for which you have prepared charts, the Bureau's 1939 period price level is considerably below, not only the 1939 yearly price level, but is also below

the yearly price level for some years prior to 1939. Have you anything to say with respect to this?

A. The charts show that the Bureau's yearly price levels for grading have trended downward from 1920 and that during the years 1938, 1939 and 1940 they are below the 1910-1914 level of prices.

Although I recognize that there have been improvements in grading machinery and explosives since the 1010-1914 period, and that the Bureau's practice is to base its price levels on the relationship of contract prices, it is difficult for me to accept any price trend line which shows the 1939 period level only 4 per cent above the 1010-1914 level.

It is well known that during the past ten years or more very little new railroad mileage has been constructed and, consequently, it seems to me that other things than contract prices would have to be taken into consideration, such as the cost of grading machinery and the price paid for common and skilled labor, all of which have risen far above the 1910-1914 price level.

For instance, the Seaboard paid only from 10 to 12 cents per hour for common labor during the 1910-1914 period while today it pays a base rate of 46 cents per hour. The [fol. 4876] 1917 rate was 12 cents per hour and since that date the rate has progressively increased from 22 cents in 1932 to 27 cents in 1937, 30 cents in 1939, 36 cents in March, 1941, 45 cents in September, 1941, and 46 cents in December, 1941.

The average rate paid common labor by the Seaboard during the 1937-1942 period approximates 35 cents per hour or practically treble the average 1910-1914 rate.

The prices for skilled labor and grading machinery have also greatly increased. Furthermore, what few contract grading jobs have been done on the Seaboard in recent years reflect considerably higher prices than the Bureau's 104 price level for 1939. In the light of all these factors the Bureau's 1939 period price level of 104 for Account 3, grading, for the Seaboard seems out of line.

My thoughts in connection with Account 12, which is very largely a labor account, are similar. I have just testified, in connection with Account 3, grading, to the very considerable increase in the price of labor which would necessarily be reflected in the cost of tracklaying and surfacing.

For this account, however, the Bureau's 1939 period price level is 167 and although this is a great deal higher than the Account 3 price level, it still seems too low.

Furthermore, the Seaboard track as of December 31, 1939, is a greatly improved track structure over that existing at June 30, 1918, in that heavier rails have been laid, stone ballast has replaced cinder and gravel ballast to a [fol. 4877] very large extent, and creosoted ties with tie plates have, to a large extent, replaced untreated ties without tie plates.

All of these structural improvements, together with a very much higher degree of maintenance, have produced a track structure of not only a greater carrying capacity, but of greater speed capacity.

For example, in 1918, the generally prevailing maximum speed permitted freight trains on the Seaboard System was 30 miles per hour and for passenger trains 50 miles per hour. Today maximum train speeds have been increased in most instances 50 per cent or more over the 1918 speeds. With a few exceptions the lowest maximum permitted speed for freight trains is now 40, 45 and 50 miles per hour and for passenger trains 65 to as high as 85 miles per hour.

It does not seem to me that these increases in the speed and stability of the track structure could have been given sufficient consideration in determining the 1939 period price level for Account 12, tracklaying.

The Bureau's 1939 period price level for Account 11, ballast, is 144, which does not appear to reflect the increase in prices being paid now and prices paid for some years past by the Seaboard for stone, gravel, slag and other types of ballast, when the cost of haul is taken into consideration.

(2) Cost of reproduction less depreciation:

As of January 1, 1940, for the Seaboard Air Line Railway [fol. 4878] System, the Commission has estimated by the straight line method of depreciation and deducted from reproduction cost about $84,500,000, or 32.88 per cent for depreciation, as compared to a similar deduction of about $41,200,000, or 17.86 per cent as of January 1, 1937.

For road and equipment property, except land, the per cent of cost new, that is the ratio of reproduction cost less depreciation to reproduction cost new, as found by the

Commission for the Seaboard has declined since basic valuation dates as follows:

Ref. No.		Date	Road %	Equip. %	Total %
1	Basic Valuation Date	6-30-18	82.23	68.30	79.11
2	Basic Valuation Date (Constructed 1925-27)	12-31-27	94.09	——	94.09
3	Weighted Average (1) + (2)		84.25	68.30	81.17
4	Ex Parte 123 15% Rate Increase	1- 1-37	81.81	83.27	82.14
5	Docket 26459 F.E.C. Ry. Div. Case	1- 1-39	71.01	59.04	67.78
6	Ex Parte 148 Rate Increase Case	1- 1-40	70.53	58.43	67.12
7	Docket 28190 Auto Rate Case	1- 1-40			
8	Docket 28300 Class Rate Invest.	1- 1-40			

[fol. 4879] If, as of January 1, 1940, all of the Seaboard's property other than land (excluding that considered as non-depreciable by the Commission, consisting of Account 1, engineering; Account 3, grading, and salvage) were given a condition of 50 per cent, that is, the service life half gone, the resulting per cent of cost new of all the Seaboard property other than land would be approximately 65 per cent. Thus, it appears that the latest Commission's figures for the Seaboard are equivalent to their finding that the average condition of all Seaboard property which they have depreciated is approximately 50 per cent.

The Commission's condition per cent for Account 8, ties, as of December 31, 1939, was about 52 per cent or approximately the same as that found at valuation date June 30, 1918, notwithstanding the fact that the Seaboard, starting about 1929, has replaced untreated ties in its tracks with treated ties to the extent of about 34 per cent up to December 31, 1939, and has been replacing untreated ties with *un*treated ties of a much better grade and class and, consequently, of a much higher service life. This practice has continued since 1939 and at the end of 1941 the Seaboard

had approximately 42 per cent of the ties in track treated ties.

Furthermore, the point of uniform renewal of the present class of untreated ties and treated ties being used in Seaboard track has not been reached and, consequently, I feel that the unexpired service life remaining in the Seaboard [fol. 4880] ties as of December 31, 1939, greatly exceeds the service life remaining in the Seaboard ties as of June 30, 1918, and should produce a much higher condition than the 52 per cent found by the Bureau.

The Commission, as of December 31, 1939, has assigned a condition per cent to Account 11, ballast, of about 15 per cent which is far below the 74 per cent found in 1918 and the normal of 50 per cent condition now generally assigned to this account. This low condition per cent has, of course, been reflected in the final value found.

In fairness to the Commission's Bureau of Valuation it should be said that in bringing valuations to more current dates, we believe the Bureau will increase this condition per cent to at least 50 per cent and perhaps more.

The Bureau took the position in connection with the ballast account that it would exclude from the Seaboard valuation all additions made subsequent to 1927 and further depreciate the ballast in the track as of that date, pending an inventory by the carrier of the ballast in track as of January 1, 1938, to effect the retirement of certain ballast materials not then considered effective and filing by the carrier of a report thereof.

This inventory was made, but due to the large amount of work involved, the carrier was unable to file its report with the Bureau of Valuation until some time in 1941, or subsequent to the date upon which the 1939 figures were compiled.

[fol. 4881] The Seaboard, starting with 1929, has placed additional ballast in its tracks amounting to about 3,500,000 tons exclusive of those amounts placed in the track and charged to maintenance. It is felt that this additional ballast and replacements made justify a condition per cent even exceeding the 50 per cent normally allowed for this account where renewals have become uniform.

As of June 30, 1918, the Commission found for Account 12, tracklaying and surfacing, a condition of about 74 per cent which was reduced to about 62 per cent as of Decem-

ber 31, 1939, notwithstanding the approximately 50 per cent increased speed capacity of the Seaboard's track structure previously referred to in my testimony regarding price levels for this account, and notwithstanding the improved condition of the various items of property comprising its track structure.

In the original Seaboard valuations, the depreciation ascertained and deducted under the Commission's rules was determined after an inspection of the property by their field inventory parties (Texas-Midland Decision, 75 I.C.C. 125 and Engineering Board Memorandum No. 226).

The same inspection method was not followed in the 1937 and 1940 valuations, the depreciation deducted being entirely the result of office calculations, although some hurried inspection of terminal facilities and rear-end train observations of some of the more important lines was made. [fol. 4882] The original method gave weight to latest renewals of property or parts thereof in fixing the ages, while the present method frequently does not reflect renewals made through maintenance since valuation date. This refers particularly to facilities made up of short-lived materials such as trestles, fences, signs, platforms, driveways, telegraph and telephone poles and timber docks.

In the original valuations, each structure was separately inspected and depreciated individually, while in the 1937 and 1940 valuations far more general methods were used which did not treat separately with individual items of property.

(3) Original cost (except land and rights):

In determining their 1939 "value" for the Seaboard System, the Commission gave nearly half weight to depreciated original cost, which has been determined by applying to total original cost the same average percentage by which the total cost of reproduction has been depreciated.

The original cost thus depreciated does not reflect the cost of all the property included in cost of reproduction less depreciation which is important in view of the fact that the depreciated original cost of about $160,000,000 is $12,600,000 less than the depreciated cost of reproduction of about $172,600,000.

The cost of treated ties, which have to a large extent replaced untreated ties subsequent to basic valuation date in

[fol. 4883] 1918, are not included in original cost. Although under the Commission's Accounting Rules this is correct, it would seem proper that such original cost should be adjusted, at least for valuation purposes, to reflect the increased cost of these treated ties so that the original cost used in determining value may include the same items of property as the cost of reproduction.

(4) Present value of land:

The methods used in appraising lands result in inadequate totals for rate making value for all Seaboard land and in no way reflect present cost of acquisition for railroad purposes. This is illustrated by the fact that for lands which the Seaboard has purchased in later years, the values found are usually far less than what the Seaboard had to pay for such lands to be devoted to common carrier service.

(5) Other values and elements of value:

In the discussion of "Other values or elements of value" in the Texas-Midland Decision there is stated, commencing on page 69, "Going concern value has been described as the value of an assembled and established plant doing business over one not thus advanced."

Analysis of the value for the Seaboard as of January 1, 1940, indicates that there is included not more than 2 per cent of the depreciated value of property other than land and working capital as compared with an average of about 4½ per cent included by the Commission in the basic [fol. 4884] valuation of the Seaboard as of June 30, 1918. There appears to be no justification for this reduction.

(6) Working capital:

No cash is included in working capital for the Seaboard as of December 31, 1939, and only 91 per cent of the approximate $4,000,000 of materials and supplies the Seaboard actually had on hand as of that date has been included as working capital. This improper omission of cash is due to the employment by the Commission of a highly theoretical formula. The failure to allow the materials and supplies the Seaboard actually had on hand December 31, 1939, is said to be due to the exclusion of scrap and materials and supplies for addition and betterment work. The Seaboard has no way of getting a return on the 9 per cent of material stock excluded, except from net railway operating income,

and this excluded 9 per cent should, therefore, be included in its rate base.

Commr. Aitchison: Anything further, Mr. Abeles?

Mr. Abeles: Not unless there is cross-examination.

Mr. Bell: I would like to ask one question, if the Chairman please.

Commr. Aitchison: Proceed, Mr. Bell.

Cross-examination.

By Mr. Bell:

Q. Referring to your Exhibit 208 look at the Account 53, that trend line that you call the Bureau's yearly price levels.

[fol. 4885] Is that a result of the indices agreed upon from time to time by the Equipment Committee and the representatives of the Bureau of Valuation?

A. I think so, yes, sir.

Q. And just illustrative of what happened, that dot over there on the right-hand side substantially below the agreed prices indicates the cost of reproduction price figure used by the Bureau as of January 1, 1940, or December 31, 1939?

A. For the Seaboard Air Line Railway.

Mr. Bell: That is all.

Commr. Aitchison: Was this a general agreement or an agreement relating to the Seaboard?

The Witness: No, sir, I am not familiar——

Commr. Aitchison: I asked which.

The Witness: There was a Joint Equipment Committee that negotiates with the Bureau on factual data regarding the cost of equipment.

Commr. Aitchison: But the purport of Mr. Bell's question was that the Bureau of Valuation had gone in the face of an agreement it had made. Was that agreement one which related to the Seaboard or was it general in its terms and related to all of the carriers, or was it merely an average?

The Witness: It was an average that related to all carriers.

Commr. Aitchison: The average, yes, sir.

[fol. 4886] The Witness: That is my understanding. The trend line doesn't explain anything with respect to the Seaboard alone. That is for the southern group of carriers.

Mr. Bell: I had no reference to the Seaboard figure. I was referring to the trend itself as being the result of these indices agreed upon, as I understand it, between the Joint Equipment Committee of the railroads and the representatives of the Bureau of Valuation, just using this account 53 as illustrative.

Commr. Aitchison: Your question would have had more pertinency, it seems to me, Mr. Bell, if you had made a distinction in showing what the Bureau had done in previous years.

Mr. Bell: I am not talking about the Seaboard particularly.

Commr. Aitchison: You did talk about it. You asked a question about it.

Mr. Bell: I wanted to show what that dot meant. My reference respecting the agreement had reference with respect to the trend line.

Redirect examination.

By Mr. Abeles:

Q. From your experience, Mr. Roby, have you any reason to believe that the cost of equipment to the Seaboard is substantially lower than the average cost indicated by this trend line to which Mr. Bell's question referred?

A. No, sir, I have no reason to believe it is lower. They bought from practically the same companies.

[fol. 4887] Q. In other words, is there any sectional influence on the cost of equipment so far as you know?

A. I shouldn't think so. The companies that manufacture are not located in the South.

Mr. Abeles: That is all.

Commr. Aitchison: Exhibit 208 I think has been received.

Cross examine. (No response.)

That seems to be all, Mr. Roby. You may be excused.

(Witness excused.)

Mr. Gwathmey: Mr. Chairman, that completes for the time being the testimony we have with respect particularly to the Florida Peninsula.

However, it was understood yesterday, I believe, that Mr. Wolford would be recalled for the purpose of submitting a couple of exhibits relating to the case in general.

May I call him now?

Commr. Aitchison: Very well.

W. W. Wolford, was sworn as a witness and testified as follows:

Direct examination.

Mr. Gwathmey: Mr. Chairman, my attention was directed to the fact this morning that in testifying yesterday Mr. Wolford filed his Exhibit 204 but there was an extra page at the end of the exhibit which was not separately numbered.

Now that other witnesses have testified in the meanwhile [fol. 4888] I would like to ask that that separate page at the end of the bound exhibit be given a number. It would be No. 209, as I recall.

Commr. Aitchison: It will be numbered Exhibit 209.

(Exhibit No. 209, Witness Wolford, marked for identification.)

By Mr. Gwathmey:

Q. Will you proceed, Mr. Wolford, to present the two additional exhibits that you have?

A. Yes. I have an exhibit consisting of three pages showing the rates on glass bottles from Chattanooga, Tennessee, Streator, Illinois, and Charleston, West Virginia, to destinations within Southern territory having a population of 25,000 or more.

The purpose of this exhibit is to show that if the Official territory level of rates should be made available to the manufacturer at Chattanooga the gain that he would obtain in connection with his lower rates into Official territory would be, to the extent shown in this exhibit, offset by a loss in the advantage he now has over his competitors in Official territory in shipping into Southern territory.

The comparison is set out there on the exhibit and I think it needs no further comment.

Mr. Gwathmey: That will be exhibit what?

Commr. Aitchison: Exhibit 210.

(Exhibit No. 210, Witness Wolford, marked for identification.)

[fol. 4889] The Witness: The other exhibit is similar except that it deals with bedroom furniture and mattresses, less carload, from Birmingham, Alabama; Muncie, Indiana; Indianapolis, Indiana, and several other points in Official territory.

The purpose of the exhibit is exactly the same.

Mr. Gwathmey: We ask that these two exhibits be received, Mr. Chairman, and I have no further questions of this witness.

Commr. Aitchison: No further questions?

Mr. Gwathmey: I have no further questions.

Commr. Aitchison: Without objection these exhibits are received, and you may cross examine.

(Exhibits 210 and 211, Witness Wolford, received in evidence.)

Cross-examination.

By Mr. Norman:

Q. Your Exhibit 210, is it, that deals with glass bottles?

A. Yes.

Q. Have you made any investigation to ascertain what would be the effect of rates in the opposite direction made on the same scale?

A. Just what do you mean by the opposite direction?

Q. Well, the rates northbound.

A. That was shown by the witness himself, the rates from Chattanooga into Official territory on his exhibit, of which this is rebuttal.

[fol. 4890] Q. Would not the effect be, taking the two exhibits together, to narrow the competitive disadvantages in both directions?

A. Well, the rates of course from all the points, all competitive points, would be reduced.

Q. And the spread between them would be reduced both northbound and southbound?

A. Yes, I think that would follow in all cases.

Q. So that looking at it from the standpoint of the South, the southern consumer would have a more highly competitive market in which to buy and the southern producer would reach, on a more advantageous competitive relationship, the larger markets in the North?

A. He would reach the larger markets in the North with more ease by reason of the reduced rates and reduced spread, but as the exhibit shows, his competitor in the North would likewise reach his markets with more ease and with less spread over him.

Q. So that commerce would be promoted in both directions?

A. Simply through a reduction in rates for both.

Q. Not only in rates but in rate relationships, wouldn't it?

A. Well, it seems to me that the reduction in rates is the controlling thing and the relationship for each one offsets each other. At least that is the purpose of the exhibit, to show the extent to which they do.

Mr. Norman: That is all.

Commr. Aitchison: Any further cross examination?

[fol. 4891] Mr. Smelker: One question, if the Commissioner please.

Cross-examination.

By Mr. Smelker:

Q. Is there any difference in rates on new and returned furniture or old glass bottles from these points named in your exhibit to Southern territory?

A. I don't recall that there are any rates on the old furniture or old glass bottles.

Q. I will refer to new furniture also, new and returned, or old glass bottles, new and returned furniture.

A. I don't understand your question, then.

Q. I asked if there was any difference in rates between those you have named and those on new and returned furniture or old glass bottles.

A. Well, you say "between," and then you name "new" again.

You are asking if there are any rates between new furniture and new furniture.

Q. I will make it returned furniture, then, or old glass bottles.

A. I still don't know what you are asking.

Q. I will ask the question over.

Is there any difference in the rates on new and returned or old glass bottles from these towns named in your exhibit

to Southern territory? I am talking about bottles only, now.

A. You say, "Is there any difference in the rates between new and returned furniture?" Is that the question?

[fol. 4892] Q. Bottles.

A. Or new and returned bottles. So far as I know there are no rates involved here on the returned bottles. I don't know of any. In other words the rates on the new bottles also apply on the old bottles, so far as I know.

Chrmn. Alldredge: I don't think that is what he is driving at.

If these bottles are returned to the factory—I presume that is what he is assuming—shipped out as full containers and then returned as empty containers, do you have any difference in the rates? You do in some instances. Do you have in this instance?

The Witness: I think not.

Mr. Smelker: That is all.

Commr. Aitchison: There seems to be no further cross examination and you are excused.

(Witness excused.)

Mr. Gwathmey: That is all I have, Mr. Chairman. Thank you very much.

Commr. Aitchison: We will now take up the Eastern carriers. Mr. Healy.

Mr. Healy: Mr. Hart has a short statement he desires to present at this time.

William B. Hill, was sworn as a witness and testified as follows:

[fol. 4893] Direct examination.

By Mr. Hart:

Q. Will you give your name, address, and occupation, Mr. Hill?

A. William B. Hill, General Freight Agent, Bangor and Aroostook Railroad Company, the Canadian and Pacific Lines (operating in northern Maine) and the Aroostook Valley Railway operating in northern Maine, a subsidiary?

A. I do.

Q. Have you prepared a statement in behalf of all those lines?

A. I have.

Q. Has that been distributed?

A. Yes, sir.

Q. To counsel?

A. Yes, sir.

Mr. Hart: Mr. Chairman, if it is agreeable to the Commission and to the counsel this may be copied into the record.

Commr. Aitchison: It has been circulated?

Mr. Hart: It has been circulated yesterday.

Commr. Aitchison: Without objection that may be done, if we can have copies here.

Off the record.

(Discussion off the record.)

By Mr. Hart:

Q. This was prepared under your direction and supervision?

A. It was.

[fol. 4894] Q. And it is true and accurate?

A. Yes, sir.

Mr. Hart: Mr. Chairman, we offer that as an exhibit.

Commr. Aitchison: That will be Exhibit 212.

(Exhibit No. 212, Witness Hill, marked for identification.)

Mr. Hart: It relates to the position of the Bangor and Aroostook Railroad Company, the Canadian Pacific Lines, operating in Maine, including its subsidiary, the Aroostook Valley, in these proceedings.

Commr. Aitchison: Anything further?

Mr. Hart: Nothing further.

Commr. Aitchison: Exhibit No. 212 is received.

(Exhibit No. 212, Witness Hill, received in evidence.)

Commr. Aitchison: You may cross examine. (No response.)

If there is no cross examination, Mr. Hill, you are excused.

The Witness: Thank you.

(Witness excused.)

Mr. Healy: I will call Mr. Tannehill.

W. T. TANNEHILL, previously sworn, recalled and testified as follows:

Commr. Aitchison: These exhibits will be marked Exhibits 213 and 214.

Mr. Healy: This exhibit was circulated in Columbus, Ohio, [fol. 4895] and we subsequently found some errors in Sheet 43 and we reproduced it.

Commr. Aitchison: They will be separate exhibits just the same. Exhibit 213 will be the principal exhibit and 214 the correction.

(Exhibits 213 and 214, Witness Tannehill, marked for identification.)

Direct examination.

By Mr. Healy:

Q. Mr. Tannehill, have you prepared an exhibit rebutting certain evidence introduced at the previous hearings in this proceeding?

A. I have.

Q. Is this the exhibit which has been circulated consisting of 51 pages?

A. Yes, sir.

Q. Have you also prepared an exhibit which has been marked No. 214 which is corrected Sheet 43 of Exhibit 213?

A. Yes, sir.

Q. Were these exhibits prepared by you or under your direction?

A. Yes, sir.

Q. Have you prepared a statement dealing with the various aspects of these exhibits?

A. Yes, sir.

Mr. Healy: Mr. Chairman, the exhibit was circulated at the Columbus hearing and the statement of Mr. Tannehill [fol. 4896] was circulated yesterday.

If it is agreeable to you we would like to have the statement copied into the record and I offer the exhibits in evidence.

Commr. Aitchison: Is that satisfactory?

Mr. Norman: Well, I guess so.
Commr. Aitchison: Off the record.

(Discussion off the record.)

Commr. Aitchison: The statement may be copied in, and without objection Exhibits 213 and 214 are received.

(Exhibits 213 and 214, Witness Tannehill, received in evidence.)

The Witness: The first 26 pages of my exhibit portray the action taken during recent years by Official territory carriers upon requests for rate adjustments made by the Southern carriers. Although this is not a complete showing, it illustrates the close cooperation between the Southern and Northern carriers in providing rates to meet the ever changing requirements of commerce.

These pages vary slightly in form, but show the commodity, the origin and destination, the mileage, the rate in effect at the time the proposal was submitted, the rate sought, the rate concurred in by the Official territory lines and the relationship of the latter rate to the Official territory level.

In addition to the commodities listed on pages 1 to 26, inclusive, the Official territory carriers have concurred in [fol. 4897] numerous other adjustments, such as the three thousand odd exceptions ratings from Southern territory to Official territory, which became effective September 1, 1940, and previously referred to at the Indianapolis, Indiana, hearing.

In connection with the revision of the three thousand odd exceptions ratings it should be said that the Official territory lines not only joined in these reductions, but waived the minimum charge provisions at the gateways in order to give the reductions their full effect.

The Official territorry carriers have also approved the establishment of rates on woodpulp from Southern origins on basis of 22½ per cent of I. C. C. Docket 15879 Appendix E Scale from Southern pulp mills to Northern consuming points, which is the present level of rates within Official territory.

Q. Have you reviewed Witness Spottswoood's Exhibit No. 76, and have you comments that you would like to make in connection with this exhibit?

A. I have reviewed the exhibit and have some comments with respect to it.

Turning first to page 11 of Exhibit 76, we find a map purporting to show an inequality in marketing opportunity in the distribution of matches manufactured at Birmingham, Alabama, which is attributed to the present class rate structures.

The witness uses Birmingham, Alabama, and Oswego, New York, as examples, and although the witness conceded [fol. 4898] that there is no production of matches at Birminimum, Alabama, he failed to mention that there is a large production of matches at Barberton, Wadsworth, Cincinnati, Dayton, Piqua, Ohio; Wheeling, West Virginia; Belle Fonte, Pennsylvania; Chicago, Illinois; St. Louis, Missouri, Oshkosh, Wisconsin, and Cloquet, Minnesota. If there were a match concern at Birmingham, these centers of production, rather than Oswego, would constitute its competition to the shaded area on the map.

Witness Maurer, representing Jacksonville, Florida, in his discussion of the competitive situation with respect to the production of matches, Southern Freight Association territory versus Official Classification territory, complained:

"In the meantime and because of our inability to secure prompt relief, the Jacksonville match plant was unable to exist under the handicap in the freight rates to the North and was closed." (Record pages 1840-1843.)

On page 27 of my exhibit is a statement of the first class all-water rates applicable on matches from Jacksonville to North Atlantic Ports, Baltimore, Maryland, to Boston, Massachusetts, inclusive, which were available at the time the plant was closed.

It will be noted that the Jacksonville match manufacturer had rates to this densely populated area in Official territory which were far below the Official territory level. Thus it is difficult to understand how freight rates can be held [fol. 4899] responsible for the closing of this plant.

Page 12 of Witness Spottswood's Exhibit No. 76 is a map designed to show alleged inequality of marketing opportunity in the distribution of shoes manufactured in the Southwest and uses Boston, Massachusetts and Fort Worth, Texas, as comparative illustrations.

The witness has completely ignored the large production of shoes at Endicott, Johnson City, Binghamton, New York; Columbus, Ohio; Chicago, Illinois; St. Louis, Missouri; Vincennes, Indiana, and Caruthersville, Missouri, which would set the market in this territory if freight rates had any bearing upon the marketing of shoes in the shaded area.

Page 31 of my exhibit is a statement, taken from U. S. Department of Commerce reports, showing the value of boots and shoes (except rubber) produced in the United States for the years 1919, 1929, and 1939.

This statement shows that although there was a general falling off in value of total production, Massachusetts endured a much greater falling off than the country as a whole, while Texas shows an increase both in 1929 and 1939 over 1919.

This page of my exhibit also shows a large production of shoes in or near the shaded area on the map, page 12, of Witness Spottswood's Exhibit 71.

Page 13 of Witness Spottswood's Exhibit No. 76 is a map showing what purports to be a competitive condition [fol. 4900] existing in the manufacture of traveling bags. Here the witness uses Woodbury, New Jersey, and Denver, Colorado, as examples.

According to the luggage and leather goods directory and year book, 1942 edition, published by the Haire Publishing Company, 1170 Broadway, New York, there are 19 manufacturers of luggage in Wisconsin; 64 in Chicago, Illinois; 3 in Iowa; 15 in Missouri; 2 in Minnesota; all located within or adjacent to the shaded area on the map and competitive with the two manufacturers in Denver, Colorado.

Q. Have you any comments to make in connection with page 15 of Witness Spottswood's Exhibit No. 76?

A. Yes. In connection with Item 1, Automobile Storage Batteries. The witness uses Chicago, Illinois, as a producing point, Washington, D. C., as a destination, and Jacksonville, Florida, as the handicapped point. Again the witness ignores the large production of batteries at Philadelphia, Pennsylvania, only 139 miles away.

The witness also uses Newark, New Jersey, as the favored point and Wichita, Kansas, as the handicapped point in marketing at Muncie, Indiana, which is the home of a very large battery producing plant of General Motors.

Item 2, Fresh Beef. The witness uses Buffalo, New York, as the favored producer over Ottumwa, Iowa, in marketing meats at Muncie, Indiana. He ignores the fact that the packing plant at Ottumwa is in the livestock producing [fol. 4901] area, while the Buffalo packers, located several hundred miles east of Muncie, must backhaul the fresh beef they produce from Western livestock on which a much greater transportation charge would apply than to Ottumwa.

Item 3, Boots and Shoes. My comments with respect to page 12 of this exhibit apply equally to this item, bearing in mind that different origins and destinations are used.

Item 4, Milk Bottles. Here the witness uses Toledo, Ohio, and Elmira, New York, as the favored producers and Sapulpa, Oklahoma, and Santa Anna, Texas, as the alleged handicapped producers, the competitive market being St. Louis, Missouri.

In the first place, there are no milk bottles produced at Toledo, Ohio, or Santa Anna, Texas. Secondly, the St. Louis market would be reached by the nearby large production of milk bottles at Streator, Illinois, which is only 197 miles from St. Louis.

Item 5, Domestic Electric Water Heaters. Here the witness uses Pittsburgh, Pennsylvania, and Schenectady, New York, as the favored producers and Chattanooga, Tennessee, and Jefferson, Iowa, as the alleged handicapped producers. The destinations are Peoria, Illinois, and Springfield, Ohio. The several manufacturers of this commodity at Chicago, only 145 miles from Peoria, Illinois, and at Mansfield, Toledo, Cleveland and Dayton, Ohio, only short distances from Springfield, Ohio, are ignored.

[fol. 4902] Item 6, Paints ready-mixed in oil. The witness uses Pittsburgh, Pennsylvania, as the favored producers, and Chattanooga, Tennessee, as the alleged handicapped producer for the Burlington, Iowa, market, again overlooking the large production of paint at Chicago, Illinois, only 206 miles from Burlington.

Item 7, Canned Green Peas. Here the witness uses Manitowoc, Wisconsin, Baltimore, Maryland, and Indianapolis, Indiana, as the favored producers, and Blythesville, Arkansas, Newport, Tennessee, and Marshalltown, Iowa, as the alleged handicapped producers, to the markets at Terre Haute, Indiana, Roanoke, Virginia, and Belvidere, Illinois,

There is a heavy production of peas in southern Indiana adjacent to Terre Haute. According to the United States Department of Commerce, Bureau of Census, 16th Census of the United States, taken in 1940, there was a total pack of peas in Indiana of 421,995 cases.

Belvidere, Illinois, is located in northern Illinois convenient to both the Illinois and Wisconsin canning areas. According to the Department of Commerce, 1940 Census statistics, Illinois packed 1,080,070 cases and Wisconsin packed 4,954,970 cases of green peas. In other words, there is a large production of this commodity immediately to the market shown.

Item 8, Radio receiving sets. Radio receiving sets are produced at many other points much nearer the destinations [fol. 4903] discussed than are Jackson, Michigan; Philadelphia, Pennsylvania, and Rochester, New York. For example, there is a large production at Cincinnati, Ohio, and Chicago, Illinois, much nearer to the consuming markets shown, that is, Knoxville, Tennessee, LaFayette, Indiana, and New Orleans, Louisiana.

Item 10, White Laundry Soap. Here the witness uses Cambridge, Massachusetts; Jersey City, New Jersey; and Chicago, Illinois, as the alleged rate favored producers, and Nashville, Tennessee, as the handicapped producer shipping to Augusta, Georgia, Durham, North Carolina, and Ironton, Ohio.

The witness has overlooked such large producing points of soap as Cincinnati, Ohio and Jeffersonville, Indiana, which, except for Jersey City to Durham, North Carolina, are much nearer to the market shown.

Item 11, Domestic mechanical stokers. The witness uses Chicago, Illinois, as the rate favored producer and Athens, Tennessee, as the rate handicapped producer shipping to the competitive market of Paducah, Kentucky. Much nearer to Paducah are such competitive producing points as Mendota, Illinois, Bradley, Illinois, New Albany, Indiana, and Louisville, Kentucky.

Item 12, Passenger Automobile tires. The witness compares Akron, Ohio, versus Natchez, Mississippi, in shipping to Atchison, Kansas. He completely overlooks tire manufacturing plants at Memphis, Tennessee; Chicago, Illinois, and Des Moines, Iowa.

[fol. 4904] The witness has also compared Conshohocken, Pennsylvania, with Denver, Colorado, in shipping to Peoria,

Illinois, but he gave no consideration to the production of tires at Chicago, which is considerably nearer to Peoria than Conshohocken.

Item 15, Domestic electric washers. Here the witness uses Syracuse, New York, versus Manhattan, Kansas, to Indianapolis, Indiana, without considering the heavy production at Peoria, Illinois, only 212 miles from Indianapolis, Indiana.

The witness also uses Pittsburgh, Pennsylvania, versus Houston, Texas, to Omaha, Nebraska, overlooking entirely the production of washing machines at Newton, Iowa, "The Washing Machine City."

Q. Have you any comments to make in connection with page 23 of Witness Spottswood's Exhibit No. 76?

A. Yes. On page 23 rates are shown on cottonseed oil, oleomargarine, cooking or salad oils, in carloads, from Southern origins to Northern destinations. It shows that the rates on cottonseed oil are a little above the Official territory level, while rates on oleomargarine and cooking or salad oils, in carloads, are on a higher relationship to the Official territory level.

Page 28 of my exhibit is a statement taken from the statistical abstracts of the United States, 1941 edition, issued by the Bureau of Census, United States Department of Commerce, and shows the oleomargarine production in [fol. 4905] thousands of pounds from 1917 to 1940, inclusive; for the years 1927 to 1940, inclusive, the production of oleomargarine by States, and for the same four years the material consumed.

From this exhibit it will be noted that there has been a decided decline in the production of oleomargarine in the Northern States.

While there are no Southern States shown specifically in these statistics, under "all other States" it will be noted there has been an increase from nothing in 1937 to 879,000 pounds in 1940.

Under "material consumed" it will be noted that there has been a serious reduction in the consumption of cottonseed oil in the manufacture of oleomargarine, and a large increase in the consumption of soya bean oil.

Despite the fact that Illinois, Indiana, Ohio and Iowa are the largest producing areas of soya beans, the production of oleomargarine in these States has been radically reduced.

Q. Have you any comments to make as to page 24 of Witness Spottswood's Exhibit No. 76?

A. Yes. Page 24 of Exhibit 76 is similar to page 23, using woodpulp as the raw material and newsprint paper as the manufactured article. However, no complaint is made against the rates on woodpulp, pulpboard, paper bags, paper boxes and wrapping paper shown.

As to newsprint paper, the witness complains that the [fol. 4906] rates on newsprint paper from Memphis, Tennessee; Savannah, Georgia; Laurel, Mississippi, and Mobile, Alabama, to northern destinations are 159 per cent of the Official territory level. The witness in his testimony stated that he knew of no production of newsprint paper at these southern origins. To the best of our knowledge newsprint paper is produced at only one point in the South and Southwest, namely, Herty, Texas. Rates are in effect from Herty on basis of 110 per cent of class 25, I. C. C. Docket 15879, Appendix E Scale.

If newsprint paper was produced at the origins shown by the witness, there is every reason to believe that rates would be established from these origins on a similar basis.

Q. Have you anything to say as to that portion of Witness Spottwood's Exhibit No. 76 relative to sweet potato starch?

A. Yes. Pages 16, 35, 36 and 37 involve the level of rates on sweet potato starch from Laurel, Mississippi, to destinations in Official, Southern, Southwestern and Western Trunk Line territories.

We have secured pamphlets published by D. Scrivanish & Co., Philadelphia, Pennsylvania, based on data published by recognized trade journals and officers of the Department of Agriculture, illustrating the use and value of sweet potato starch. It was impossible to secure a sufficient supply of these pamphlets to include them in my exhibit. I do have 25 copies of each for distribution to those particularly interested.

[fol. 4907] Starches are divided into three groups, namely, cereal starch, tuber or root starch, and starches produced from the piths of various palms. Originally, white potato starch was the only domestic root starch. The total production in 1937 was less than 5,000 tons. Sweet potato starch is now grouped with white potato starch. In Official territory, white potato starch is produced only in the Arrostook County potato producing area in Maine.

Cornstarch is the principal starch produced in the United States, but there are definite needs by various industries for other starches which for the most part have been satisfied in the past by imported starches such as those made from cassava and sago.

Apparently sweet potato starch is not competitive with starches produced from cereal grains.

It will be noted from page 35 of Exhibit 76 that the only carload movements of sweet potato starch from Laurel, Mississippi, during the seven months period shown were to destinations in the Carolinas, Knoxville, Tennessee, and destinations in New England and Trunk Line Association territories. The destinations shown would indicate that the starch moved to textile mills, the largest carload movement to Official territory being to Lawrence, Massachusetts.

Page 29 of my exhibit No. 213 is a comparison of rates and mileage on potato starch from Caribou, Maine, to destina-
[fol. 4908] tions in Trunk Line Association and New England Freight Association territories, to which carload shipments were made from Laurel, compared with the rates and mileages from Laurel.

It will be noted that the rates from Caribou, Maine to these Official territory destinations ranged from 125 per cent to 147 per cent of the I. C. C. Docket 15879, Appendix E Scale for the distance, while from Laurel, Mississippi, the rates on sweet potato starch to the same destinations are only 103 per cent to 120 per cent of the I. C. C. Docket 15879, Appendix E Scale.

On page 35 of Witness Spottswood's exhibit 76 there is shown movements to destinations in the South and Southwest with a comparison of actual rates and rates under a caption "Official basis." There is no application of the rates carried under the caption "Official basis" to any of the Southern and Southwestern destinations so that such rates are not available to any shipper in Official territory.

Page 30 of my Exhibit No. 213 is a statement of the carload rates on starch from Chicago, Illinois, Indianapolis, Indiana, Columbus, Ohio, and Keokuk, Iowa, to the destinations in Southern territory shown on page 35 of Witness Spottswood's Exhibit 76, compared with the rates on sweet potato starch from Laurel. It will be noted that the rates from all these origins to the Carolina destinations are on a comparable level.

Q. What have you to say concerning the trend of industrial development in the North and the South?

[fol. 4909] A. On pages 31 to 41 of my exhibit we have reproduced figures taken from Government statistics in connection with certain of the commodities which have been previously discussed. The basic figures are taken from Government reports and each page shows the authority for the figures.

Exhiibt No. 79, Witness Fonville.

Q. Have you anything to say in connection with Exhibit No. 79 introduced by Witness Fonville?

A. Yes. Witness Fonville's Exhibit 79 is a statement of the shipments of washboards made by his company from Raleigh, North Carolina, for the month of September, 1941, the charges paid thereon compared with what the charges would be on the Official territory level of rates.

At page 1541 of the transcript, the witness stated that his competition was with a firm maintaining a plant at Saginaw, Michigan, and a branch factory at Memphis, Tennessee, the products of the branch factory being shipped via the Mississippi River at differential rates. His other competitor is located at Columbus, Ohio.

On page 42 and corrected page 43 we have shown the rates and charges paid by the Raleigh, North Carolina, shipper and for comparative purposes what the rates and charges would be if the same shipments had been made from Memphis, Tennessee; Columbus, Ohio, and Saginaw, Michigan. From Memphis, Tennessee, we have shown the Mississippi Valley Barge Line (barge-rail) and the rail-ocean-rail rates [fol. 4910] and charges, as well as the all-rail. We have divided the shipments into three parts, namely:

(1) Destinations in Official territory.
(2) Destinations in Southwestern territory.
(3) Destinations in Southern territory.

From these pages it will be noted that on shipments from Raleigh, North Carolina, to Official territory, the total charges paid were $184.06, while Memphis, Tennessee, with its differential rates via barge-rail, would have paid $239.70.

To all destinations to which shipments were made from Raleigh, North Carolina, in September, 1941, the total charges paid were $342.75, while the shipper at Columbus,

Ohio, would have paid $334.42 and the shipper at Saginaw, Michigan, $362.51.

Exhibit No. 83, Witness Edwards.

Q. What have you to say in connection with Exhibit No. 83 introduced by Witness Edwards?

A. This exhibit shows less carload rates on furniture rated 1st, 2nd or 3rd class from Chicago, Illinois, to points in North Carolina compared with rates based on Southern territory level from Witness Edwards' producing point, Birmingham, Alabama.

Page 44 of my exhibit 213 is a statement of 1st, 2nd and 3rd class rates from Chicago, Illinois, as compared with 1st, 2nd and 3rd class rates from Birmingham to the same destinations. It will be noted that there is very little difference between the rates from Chicago and Birmingham to [fol. 4911] these North Carolina destinations.

Attention is called to page 37 of my exhibit, which shows that the value of wood household furniture produced in North Carolina has increased from $23,340,000 in 1921, to $50,224,000 in 1939, while the value of wood household furniture produced in Illinois has decreased from $61,908,000 in 1921, to $37,809,000 in 1939.

Exhibit No. 96, Witness Murray.

Q: Mr. Tannehill, have you anything to say in connection with Witness Murray's Exhibit No. 96?

A. Yes. Pages 14 to 20, inclusive, of Witness Murray's Exhibit 96 contains a list of commodities and among other things, shows what is purported to be the percentage relationship of rates on these commodities to first class in Official territory. There are a number of errors in this part of the exhibit and on pages 50 and 51 of my Exhibit 213 I have shown the correct ratings.

Page 23 of Witness Murray's Exhibit No. 96 sets forth, among other things, the rates purported to be in effect on fibreboard boxes, K. D., carload, from Little Rock, Arkansas; Advance, Louisiana; Sand Springs, Oklahoma, and Dallas, Texas, to a number of Official territory destinations.

Page 45 of my Exhibit 213 shows the correct rates to Official territory points from Advance, Louisiana, and Dallas, [fol. 4912] Texas. We cannot locate in the files of the Official territory associations any requests for rates from Little Rock, Arkansas, or Sand Springs, Oklahoma.

If requests were received, there is no reason to believe that rates from Little Rock, Arkansas, and Sand Springs, Oklahoma, would be treated any differently from those in effect from Advance, Louisiana, and Dallas, Texas.

Pages 26 and 27 of Witness Murray's Exhibit No. 96 compare the level of rates on cotton from Southwestern origins to various destinations, including destinations within Official territory, namely, Boston, Massachusetts; Indianapolis, Indiana, and Columbus, Ohio.

There is no production of cotton in Official territory and the rates in effect from Southwestern origins shown on pages 26 and 27 of Exhibit No. 96 are already lower than the rates prescribed by the Interstate Commerce Commission in the Cotton Investigation, Docket 17,000, Part 3, 165 I. C. C. 595. In other words, any rates applied to cotton moving wholly within Official territory would be in a sense proportional rates, as the cotton would have had a prior movement.

On pages 30 and 31 of Witness Murray's Exhibit No. 96 comparison is made between (1) the rates on lumber from various Southwestern origins to destinations, among which are a number of Official territory destinations, (2) the Official territory level of 22½ per cent of first class, and (3) the [fol. 4913] level of rates prescribed by the Interstate Commerce Commission in 235 I. C. C. 683, of 25 per cent of first class for application in Official territory.

From this exhibit it will be noted that, generally, the rates on lumber from the Southwestern origins shown are considerably lower than the Class 25 and in many instances are lower than the present level of 22½ per cent of I. C. C. Docket 15879, Appendix E Scale, the basis presently applicable within Official Territory.

To complete the showing made in this exhibit on lumber, we have added the Northeastern destinations of Boston, Massachusetts, and Portland, Maine.

Page No. 46 of my Exhibit 213 shows that the rates from the Southwestern origins used are presently lower mile for mile than the Official territory level.

On page No. 32 of Witness Murray's Exhibit No. 96 is shown, among other things, what purports to be the present rates on wrapping paper and paper bags, carload, from Crossett, Arkansas, Advance, Louisiana, and Dallas, Texas, to certain Official territory destinations.

While the witness in his testimony at page 1984 of the record corrected the "A" reference under the rate column, the figures were not corrected, and page 47 of my Exhibit No. 213 shows the correct rates to Official territory destinations.

Page No. 35 of Witness Murray's Exhibit No. 96 compares [fol. 4914] rates on soda ash from Southwestern producing points to points in the Southwest and from Southwestern producing points to Official territory with the Official territory level.

Page No. 48 of my exhibit No. 213 is a comparison of the rates shown on page 35 of Exhibit 96 from Southwestern producing points to destinations in the Southwest with the rates from Official territory producing points to the same Southwestern destinations.

Witness Frye, *Witness* No. 99.

Q. Do you have any comments on Exhibit No. 99 introduced by Witness Frye?

A. Yes. Witness Frye's Exhibit No. 99 compares rates on synthetic rubber from Southwestern points to representative destinations in Official and Southwestern territories.

It was admitted by Witness Frye that in so far as the rates from Baton Rouge, Louisiana, are concerned, the rates on Official territory level have been published; this publication having been made on short notice, effective September 10, 1942.

Q. Mr. Tannehill, in connection with this synthetic rubber situation, have the carriers worked out with the interested shippers a basis for application from all producing points?

A. At the time the Baton Rouge, Louisiana, rates were approved and published, the Official territory lines had no knowledge as to production of synthetic rubber at Dallas, Texas, El Dorado, Arkansas, Oklahoma City, Oklahoma, or other points in the Southwest.

[fol. 4915] However, to complete the record, rates were established, effective January 1, 1943, from all points of production, either presently in operation or contemplated, to consuming points in all territories on basis of 36 per cent of I. C. C. Docket 15879, Appendix E Scale, for the distance.

Witness Byars, Exhibit No. 102.

Q. Mr. Tannehill, have you some remarks regarding Witness Byars' Exhibit No. 102?

A. Witness Byars' Exhibit No. 102, Section A, page 2, compares the rates on carbon gas black in Official territory. This page of my exhibit shows that the only States producing carbon gas black are the States of Louisiana, Texas, Kansas, Oklahoma and Wyoming. It is also interesting to note that in 1923 the production of this commodity in Texas amounted to 2,633,000 pounds, and in 1937 increased to 421,000,000 pounds.

Mr. Healy: The witness is tendered for cross examination.

Chrmn. Alldredge: Have you included some commodity rates in here?

The Witness: Yes, sir.

Cross-examination.

By Mr. Norman:

Q. Mr. Tannehill, isn't it true that with the exception of the raw materials that w-ere you have established rates from the South to the North they are generally on a higher basis than prevail in the North?

[fol. 4916] A. No, sir.

Q. Well, I will ask you to point those that are on a parity basis.

A. The ferro alloys on pages 17 to 26, inclusive.

The blanks, stampings and shapes, unfinished aluminum, on page 16.

Q. Well, unfinished aluminum?

A. To my mind that is far from a raw material. It is a manufactured product.

Q. It is further manufactured after it gets to destination, isn't it?

A. Quite likely; but together, at least.

The synthetic rubber.

Q. Do you consider that not a raw material?

A. Not entirely so, no, sir. Synthetic rubber has a lot of processing.

Q. In connection with the synthetic rubber you have not established any such rates on tires, have you?

A. In some instances. I have none of them here, but I think of quite a number of instances the combinations make even less than our level.

Q. But that is due to the fact the Southern carriers have published a low proportional to the territory boundary, isn't it?

A. Well, and low rates we have from the boundary because of truck competition.

[fol. 4917] Q. But isn't it true now though, Mr. Tannehill, that you all have declined to establish rates on the tires on the parity basis whereas you have established them on the synthetic rubber?

A. No, I don't recall of our lines ever declining to establish that level on tires.

Q. It has never been presented to you?

A. I don't think it has ever been presented to us to my knowledge.

I would like to call your attention also to the fact that leather- from the North Carolina-Tennessee territory on page 8 generally are somewhat lower than our level; equal to, at least.

Q. Do you consider that a raw material or a finished product?

A. As far as leather is concerned, a finished product. It is far beyond the hide.

I would call your attention to the upholstering, fabric, and trimming on page 6.

I would call your attention to the cotton flannels or napped fabric on page 4.

Q. Wait just a second, now. On page 6 you said "fabric."

A. Upholstering and fabric and trimming, carload.

Q. You say that is a finished product?

A. Yes.

Q. All right; go ahead. What was it on page 4?

A. Page 4 is the cotton napped flannels.

[fol. 4918] Q. Well, now you have a heading here, "Rate in effect at time of proposal per 100 pounds except as otherwise provided."

A. That is correct.

Q. Then you have "Rate sought."

A. That is the proposal that was submitted to our lines.

Q. All right; go ahead.

A. Then I would call your attention to page 1, painted, freight, automobile body parts, wooden.

Q. "Freight"? What does that mean?

A. Freight, automobile body parts, wooden, painted.

Those rates were established for the specific purpose of permitting the wooden parts for freight automobile bodies to be produced in the South finished, ready to assemble at the northern destination, and they were put in in September 15, 1942, to take care of small industries in the South.

Q. In order to do that there had to be a special proposal which had to be submitted through the panels of the committees and finally approved before those small industries could start producing these?

A. And having handled that particular proposal it was less than 10 days from the time it was originally submitted until it was approved.

Q. That was a war matter, wasn't it?

A. It was a matter of necessity because of the inability to put steel into automobile body parts, and the wood was [fol. 4919] to take the place of it, but nevertheless we had plenty of rates on wooden automobile body parts in the white. These are the painted, ready to be put into the body to be assembled.

Q. Would your lines have any objection to joining in rates made on the same level as obtains in your territory from the South provided the level of the rates in the South was the same as in your territory?

A. If there was a necessity for the rates. That is rather a broad question because rates should be made more or less on what the traffic will bear, if there is necessity for it, and my exhibit shows apparently there was no necessity for rates as low as our level. In all instances the traffic moved freely; to the best of my knowledge it did.

And if the rates were established on our level, the assembly rates within the South should not be on a lower level than ours, and the next question naturally is what our earnings will be out of rates established in that manner.

Q. But assuming that the class rate level is the same in the South as in your territory, would you have any objection to interterritorial rates made on that same level?

A. The class rate level would not cover the assembling articles.

Q. I am not confining this question to assembling. I am confining it to class rates and articles moving on class rates. Suppose they had the same level in both territories?

A. If the commodity moved within the South on the class [fol. 4920] rates, and there was a necessity for it, and our

earnings were proper, it has already been testified that we would.

Q. That you would have no objection if the level was the same in both territories to the interterritorial rate being on that?

A. If all the rates were on our level at least.

Q. What do you mean by all of them?

A. You can't take class rate traffic and put that on a level up into our territory and then secure traffic moving on a different level of commodity rates as an exception in the South or in any other territory.

Q. I am talking now about a commodity that moved we will say on first class in Southern territory and first class in your territory and the movement between the two territories on that same level.

A. If there was the necessity for it, and the facts warranted, and we had equal factors of divisions, probably not.

Q. What do you mean by if the facts warranted?

A. The question of whether it is necessary to reduce those rates to that extent.

Commr. McConnaughey: To accomplish what?

The Witness: To move the traffic into the territory, into destination territory.

There is another thing, of course. If that was done we would expect the same level of rates southbound. Rates would have to be the same in both directions.

[fol. 4921] Q. That would be perfectly satisfactory. But you still haven't given me a frank answer to my question, I don't think, and my question is that, assuming that this Commission prescribed for intraterritorial application within the South the same level of class rates that applies in your territory, would you have any objection to the intraterritorial rates then being made on that same level, applicable in both directions?

A. Applicable in both directions, I doubt if we would, and with the divisional question properly settled.

Mr. Norman: That is all.

Commr. Aitchison: Any further questions? (No response.) You are excused.

(Witness excused.)

Mr. Eshelman: Mr. Heywood, will you take the stand?

J. L. Heywood, previously sworn, recalled and testified as follows:

Direct examination.

By Mr. Eshelman:

Q. You have previously been sworn and have testified in these proceedings?

A. I have.

Q. Are you familiar with the testimony of Witness Waring at pages 2904-5 of the record to the effect that it is his position and that of the American Trucking Associations, Inc., that "the present less than carload rates of the railroads obviously are unprofitable and should be increased"?

[fol. 4922] A. I am.

Q. Have you prepared an exhibit showing a comparison of class rate scales in Official Territory with less carload costs based on Dr. Edwards' exhibit?

A. I have.

Q. Is it true and correct to the best of your knowledge and belief?

A. It is.

Q. Has it been distributed?

A. It has.

Mr. Eshelman: Mr. Chairman, if agreeable to the Commission and the parties we would ask that the prepared statement of Mr. Heywood be copied into the record and that the exhibit be received.

Commr. Aitchison: The large exhibit will be marked Exhibit 215, and without objection the statement may be copied in.

(Exhibit No. 215, Witness Heywood, received in evidence.)

Q. Of how many pages does the exhibit consist?

A. On nine pages plus the cover. The first four pages consist of charts and the fifth page shows the bases of costs and class rates used in preparing the charts.

Pages 6 and 7 make comparisons of the costs in the South with the East, respectively including and excluding Pocahontas Region, similar to Mr. Kennedy's Exhibit 181, [fol. 4923] Identification 8, using the unit costs and consist of traffic for the five years, 1937 to 1941, inclusive.

Pages 8 and 9 indicate the derivation of the data shown on pages 6 and 7, lines 14 and 15.

Q. Are you familiar with Dr. Edwards' Exhibit 13, Chart 5, in which he makes a graphic comparison of class rates with less carload costs as developed by him?

A. Yes. In Chart 5 of Exhibit 13, Dr. Edwards presents a graphic comparison of class rates in Official territory, as based upon the Eastern class rate scales, with less carload costs both on a total out-of-pocket basis which includes 4 per cent return on the out-of-pocket portion of valuation and on such a total out-of-pocket basis plus solely related expenses. This he has done for an average load of 6½ tons moving in box cars for Territory No. 2, which is Eastern territory excluding New England and northern Illinois.

Q. In what respects do the charts in your Exhibit No. 215 differ from Dr. Edwards' Chart 5 in Exhibit 13?

A. My exhibit differs in four ways from Dr. Edwards' chart:

(1) I have made comparison for loads of 8, 10 and 12 tons, as well as for 6½ tons.

(2) The costs plotted on my exhibit are for territories 1, 2 and 5 combined. This represents the Eastern territory, including New England and Pocahontas territories.

(3) The charts in my exhibit show out-of-pocket costs [fol. 4924] excluding any return, in addition to showing the two levels of costs shown by Dr. Edwards.

(4) I have also developed these three levels of costs with the inclusion of the expense for pick-up and delivery and allowances to shippers in lieu thereof.

Q. What scales of class rates are depicted on the graphs?

A. The 1st, 2nd, 3rd and 4th class rates resulting from Appendix E scales prescribed in the Eastern Class Rate Investigation (I. C. C. Docket 15879) as in effect just prior to the Ex Parte 148 increases.

Q. Will you state what are the various bases of costs depicted on your exhibit?

A. On each sheet there are three cost lines shown in black. Reading the chart from bottom to top the lowest black line on each sheet represents "out-of-pocket operating expenses, rents, and taxes."

The middle or broken black line represents "total out-of-pocket cost," which differs from the cost first described

in that it includes a 4 per cent out-of-pocket return on 100 per cent of equipment value and on 50 per cent of road value. Hereafter for convenience I shall refer to these two levels of costs as "out-of-pocket expenses" and "total out-of-pocket expense," respectively.

The third or dotted black line represents "total out-of-pocket costs and solely related expenses" which consists [fol. 4925] of "total out-of-pocket cost" plus additional elements of constant costs.

Again reading the charts from bottom to top, the first, second, and third red lines correspond to the first, second, and third black lines, respectively, and represent the costs of less carload service on the several bases described including the expense for pick-up and delivery and allowances in lieu thereof.

Q. On what basis do the several costs shown include expense for pick-up and delivery and allowances?

A. The total expense for those items as taken from Table 5 of Exhibit 13 has been divided by the so-called L.C.L. "cwt. carried" as taken from Table 6 of Exhibit 13. The resulting dividend of 7.68 cents per 100 pounds has been added to the several scales of less carload costs as depicted by the black lines on the charts to arrive at those portrayed by the corresponding red lines.

I may add that the item described by Dr. Edwards as "cwt. carried" does not involve any duplication such as do the reported figures designated as tons carried when the latter are compiled for a region or territory. Dr. Edwards computed L.C.L. "cwt. carried" by dividing less carload tons originated plus tons terminated by 2 to obtain tons and then multiplying the latter by 20 to obtain hundredweights.

Q. Will you please turn to the chart on page 3 covering [fol. 4926] the various costs for a 10 ton load and explain briefly what is shown by this chart as to costs and rates?

A. Reference to chart on page 3 will show that "out-of-pocket expense" and also "total out-of-pocket expense" is below the fourth class rate scale at virtually all distances.

If pick-up and delivery expense is also included it will be found that on both these levels of cost the expenses are exceeded by the fourth class rate at all distances beyond 70 and 90 miles, respectively. It should be noted that pick-

up and delivery in Official territory is subject to a minimum rate of 45 cents so that the revenue in both instances from a fourth class article would exceed these bases of costs.

The line showing total out-of-pocket expenses plus solely related expenses lies generally between third and fourth class rate scale for distances beyond 60 miles and if pick-up and delivery expense is added this expense line lies between the third and fourth class rate scales for distances beyond 140 miles.

Q. Are you informed as to whether the rate scales shown on the graphs apply on New England lines in all instances?

A. I am informed that higher bases of class rates that are shown in the graphs apply to movements within New England territory and to some extent on movements to or from certain northern portions of New England but I have not undertaken to show them on the graphs.

[fol. 4927] Q. Do your charts show the 45-cent minimum rate prescribed in pick-up and delivery in Official territory, 218 I. C. C. 441?

A. Yes, they do. It is represented by a horizontal line at the 45-cent level.

Q. In what respect do your four charts differ?

A. They differ in the load for which the costs are computed. Pages 1, 2, 3, and 4 are computed for loads of 6½, 8, 10, and 12 tons, respectively?

Q. Are the charts otherwise self-explanatory?

A. I think they are.

Q. Will you please further explain pages 6 to 9, inclusive?

A. In order to show results for a recent period, I have restated Witness Kennedy's Exhibit 181, Identification 8, for the five-year period 1937 to 1941, inclusive. These exhibits are based on the elements described in the headings on pages 6 and 7. As will be seen from this exhibit the Southern costs for this five-year period were 98.2 per cent of those for the Eastern District plus Pocahontas Region. On page 7 of this exhibit is a similar comparison but excluding the Pocahontas Region figures. As there appears, the Southern Region costs were 91.3 per cent of the Eastern District costs.

Q. Have you anything to say in connection with the methods followed by Dr. Edwards in his computation of costs as shown in Exhibit 13?

A. Yes. Dr. Edwards developed his out-of-pocket ratios [fol. 4928] for each group of expenses by applying various

nation-wide out-of-pocket percentages to the primary expense accounts.

I of course do not agree, and assume that no one would contend that the out-of-pocket proportions of the individual primary expense accounts would necessarily be the same for all groups of railroads, much less for all individual railroads.

In fact, different percentages may obtain on two districts of the same carrier due to a great extent to the physical characteristics of the line, such as grades and curvatures, proportion of main and branch lines, class of train service, way and through trains, peculiarities of yard arrangements, volume of empty cars handled versus loads, type of power used, density of traffic, and other physical factors.

Q. Have you anything further to say in this connection?

A. Yes. In compiling Exhibit 13, Dr. Edwards applied the out-of-pocket ratios for each of the 10 expense groups to the total (or full) expenses for each territory as assigned to the groups in Form A (Exhibit 4) as originally compiled. Therefore, the criticisms in my previous statement of the original cost scales which were predicated on Form A would also apply to the out-of-pocket costs as developed in Exhibit 13.

Q. Mr. Heywood, have you also prepared as a separate sheet an exhibit of corrections to your former testimony at the Indianapolis hearing?

A. I have.

[fol. 4929] Mr. Eshelman: Thinking this would be the shortest way to do it, Mr. Chairman, we offer that as an exhibit.

Mr. Norman: That is the one page?

Mr. Eshelman: That is the single sheet exhibit.

Commr. Aitchison: You know our rules of practice provide a method whereby corrections can be made in the transcript.

Mr. Eshelman: We thought of having him read it in at the other hearing, but you will recall there was too much time taken up that way and you ruled that shouldn't be done in that fashion.

I wanted to receive it in this way but we weren't able to do it within the time limits prescribed by the rules.

Commr. Aitchison: Of course we want the facts. This will be Exhibit 216.

(Exhibit No. 216, Witness Heywood, received in evidence.)

Mr. Eshelman: Mr. Chairman, one other thing. We had not expected to be reached this soon. Mr. Heywood's exhibit was distributed this morning. Mr. Heywood can be available later for cross-examination if any feel that the time has been too short for examination.

Mr. Norman: I never saw it until this moment, Mr. Chairman, and I would like to have some time.

Mr. Eshelman: That is perfectly agreeable to us.

Mr. Grubbs: Will objections to the receipt of the exhibits [fol. 4930] be reserved until after the cross-examination?

Commr. Aitchison: I said without objection they would be received.

Mr. Grubbs: And I arose, your Honor, at that time and Mr. Eshelman asked me to restrain myself for a few minutes.

Commr. Aitchison: You have an objection to make?

Mr. Grubbs: I may have one after cross-examination, yes, sir.

Commr. Aitchison: Very well. I will withdraw the receipt in evidence of Exhibit 215.

(Exhibit 215, Witness Heywood, withdrawn from evidence by Commr. Aitchison.)

Commr. Aitchison: You may stand aside, then.

(Witness excused.)

Fred Carpi was sworn as a witness and testified as follows:

Direct examination—

By Mr. Eshelman:

Q. Have you prepared a statement of testimony in rebuttal of certain testimony at the Columbus hearing and in supplementation of Mr. Heywood's Exhibit 215?

A. I have.

Q. And in connection therewith have you also prepared an exhibit consisting of two sheets?

A. Yes, sir.

Q. And are these true and correct to the best of your knowledge?

[fol. 4931] Commr. Aitchison: Before you answer that, you better qualify the witness, Mr. Eshelman.

Mr. Eshelman: I beg your pardon.

Q. Mr. Carpi, what is your connection with Pennsylvania Railroad Company?

A. I am Assistant to the General Traffic Manager.

Q. And what length of experience have you had in traffic matters?

A. Since 1929 I have been successively Division Freight Agent, Assistant General Freight Agent, Traffic Manager, General Freight Agent, and my position is Assistant General Traffic Manager.

Q. In connection with your present position have you given considerable time and study to matters particularly concerned with the less carload traffic?

A. Yes, sir, intensive study.

Q. Did you answer the question as to whether your statement of testimony and the exhibit which you have prepared are true and correct?

A. I did.

Mr. Eshelman: Mr. Chairman, we would ask, if there is no objection, that the statement of testimony be copied in as Mr. Carpi's testimony, and that the exhibit be received as the next exhibit. They happen to be stapled together.

Commr. Aitchison: We will have to unstaple them.

[fol. 4932] Mr. Norman: Has that exhibit been distributed?

Mr. Eshelman: I might say, Mr. Chairman, that this exhibit was distributed this morning, we not expecting to get on the stand this early, and I am perfectly agreeable to have Mr. Carpi remain over until tomorrow morning if any wish. I would like to get him away tomorrow afternoon, if possible, as he has to be in Chicago the following day.

Commr. Aitchison: Well, this exhibit has been identified and there will be no ruling on the offer, and without objection the statement may be copied as being his testimony.

(Exhibit No. 217, Witness Carpi marked for identification.)

Statement of Testimony of Mr. Fred Carpi

My testimony will deal in rebuttal with the proposal of Witness Waring, made at the Columbus hearing on his own behalf and on that of the American Trucking Associations, Inc., that the present less than carload rates of the railroads should be increased. In the respect, my testimony will also supplement that by Mr. Heywood in connection with pages 1 to 5 of his Exhibit No. 215.

I (1) As shown by the graphic comparisons in Mr. Heywood's Exhibit No. 215, the less carload rates in Official territory at present are compensatory. This becomes more evident when there is taken into account the distribution of less carload revenue as among the various classes. Sheet [fol. 4933] 1, of my Exhibit No. 217, exemplifies that situation.

It discloses the distribution of less carload revenue by class rate groupings for two test periods in 1925 and 1939, respectively.

It will be observed that in 1939, almost 69 per cent of the revenue was obtained from traffic accorded ratings 65 per cent of first class or higher. This would generally include traffic accorded third class or higher ratings. Over 41 per cent of the revenue during the same period was obtained from rates in excess of 79 per cent of first class, which would generally include traffic rates second class or higher. We have shown the same information for a test period in 1925 to indicate that the higher classes have always contributed the greater proportion of the revenue.

Similar tests made on the Pennsylvania Railroad at different times have shown substantially the same results as those shown in the exhibit for Official territory.

For example, an analysis of local less carload class-rated traffic for the first week of June, 1931, indicated that 48.76 per cent of the revenue was derived from traffic rates second class or higher, and 76.25 per cent from traffic rated third class, Rule 25, or higher.

A similar check for the three days, April 7, 8, 9, 1936, showed that 40.59 per cent of the revenue was derived from traffic rated second class or higher, and 62.17 per cent from [fol. 4934] third class, Rule 25, and higher.

A check made of all less carload class-rated traffic terminated by the Pennsylvania Railroad for the week of Sep-

tember 8-14, 1939, indicated that over 42 per cent of the revenue was obtained from traffic rated second class or higher, and 66.68 per cent from third class, Rule 25, and higher.

The foregoing facts make it abundantly clear that within Official territory the revenues obtained from traffic rated third class and higher constitute substantially more than half of the total less carload revenues.

The traffic analysis made by the A. A. R. Merchandise Committee developed that within Official territory shipments of less carload freight of 10,000 pounds and under moved at an average rate of 72.3 cents per 100 pounds.

The same study disclosed that 43.1 per cent of this tonnage was for hauls under 300 miles, and that 58.8 per cent was for hauls under 400 miles.

The average rate mentioned, as well as the scales of class rates depicted on pages 1 to 4 of Mr. Heywood's exhibit 215 were those in effect prior to the general increase of 6 per cent authorized in Ex Parte No. 148.

Any consideration of the remunerative character of the class rates as applied to less carload traffic should take into account the fact that when pick-up or delivery is rendered there becomes applicable a 45-cent minimum rate, [fol. 4935] which the Interstate Commerce Commission prescribed in Pick-up and Delivery, in Official Territory, 218 I. C. C. 441, and which is portrayed on Mr. Heywood's Exhibit No. 215 as a heavy black horizontal line as the 45-cent level.

If the graphic comparisons contained in Mr. Heywood's Exhibit No. 215 are related to the distribution of less carload revenue as among the several classes, it will be seen that there is no substance for any contention that the present less carload rates are a burden on other traffic.

(2) In considering the remunerativeness of less carload traffic, the common error is to predicate conclusions on antiquated practices and average loadings in the distant past. The only proper test is to take into account results obtained in modern times.

By extensive and expanding use of trucks in gathering and distribution service the railroads have made astounding progress in heavier loading. For example, on the

Pennsylvania Railroad the average loading on less carload traffic at stations has shown remarkable results, as follows:

Year	L.C.L. Average Tons Per car
1933	3.64
1934	4.81
1935	4.93
1936	6.18

[fol. 4936]

1937	6.63
1938	6.39
1939	6.89
1940	7.08
1941	8.04
1942	10.15
1943 (January)	11.67

I do not have the corresponding loading figures for the Official territory railroads because such figures are not reported to the Commission. However, the O. D. T. makes public the loading results reported to it for Class I roads.

Based upon such figures for October, 1942, as made public in the O. D. T. release of December 15, 1942, I have determined that the average loading for the Official territory roads is close to that of the Pennsylvania.

Thus, for Official territory roads the average loading in that month was 10.61 tons as compared with 11.60 tons for the Pennsylvania alone.

The issuance of General Order O. D. T. No. 1 by the Office of Defense Transportation has undoubtedly spurred the campaign for heavier loading, but, it is submitted that even if this mandatory order had not been issued substantial progress would have continued.

When the Pennsylvania Railroad has completed its program of substituting trucks in gathering and distribution [fol. 4937] service it expects to obtain an average load which in the normal or post-war periods will range from 10 to 13 tons.

The size of the box car is also a factor affecting the average load. Between many points the volume available daily is greater than can be accommodated in one car. As a result "overflow" cars are used. With the tendency towards

construction of larger and more spacious equipment the number of overflor cars should diminish and average loadings should be further increased.

(3) Over the years the higher class rates have received greater increases than the rates on the lower classes and the adoption of any proposal to increase the less carload rates would only accentuate this condition.

On Sheet 2 of my exhibit there has been set forth in tabular form an historical statement of class rates from New York to Chicago during the period of January 1, 1915, to March 18, 1942, inclusive.

As will appear therefrom the fifth and sixth class rates, which are usually regarded as carload classes, were on March 18, 1942, just about double what they were on January 1, 1915.

On the other hand, during the same period the first three classes were increased from 75, 65, and 50 cents, to 177, 151, and 124 cents, or 136 per cent, 132 per cent and 148 per cent respectively. Thus, there has been a greater increase both in amount and percentagewise in the higher classes than in [fol. 4938] the lower classes.

As a general proposition, the actual difference in the spread between less carload and carload ratings during the past 30 years has just about doubled.

(4) The practicability of any proposal to increase less carload rates would depend in part upon the value of the service to the shipper. Thus, the railroads are frequently faced with the necessity of making their rates so as to conform in some measure to the charges or costs for which the shippers can obtain the needed service or its equivalent, either by the use of contract or private carriers or by other arrangements.

The greater actual increase in less carload rates than on carload rates has had a tendency to decentralize industry. In order to escape the high less carload rates, some have devised methods of distribution which have deprived the railroads of substantial revenue. Such considerations frequently limit the level of the rates which will permit traffic to move freely.

II. The suggestion on the part of Mr. Waring and the American Trucking Associations, Inc., that the less car-

load rates of the railroads be increased, and the absence on their part of any concurrent suggestions for a similar increase in carload rates, would seem to contemplate different basic scales for less carload and carload rates. The Official lines are opposed to any such proposal.

The suggestion for separate class rate scales for less [fol. 4939] carload and carload traffic would apparently have to rest upon relatively minor differences in costs and other conditions.

From a practical traffic man's standpoint, a slight or even an appreciable difference in costs cannot be made controlling in the fixation of rates, particularly in scales of class rates where uniformity in structure is desirable for purposes of securing greater simplicity in tariff publication and use.

Separate rate scales for l.c.l. and carload traffic would be burdensome to shipper and carrier alike. One of the main differences between carload and less carload traffic relates to the size of the shipment.

In countless instances, it is necessary for the shipping public and the railroads to ascertain both the less carload and carload rates in order to comply with the long standing classification provision that the charge on the less carload shipment must not exceed the charge based on the carload rate and minimum.

Furthermore, in determining the measure of the carload rate on a particular commodity the less carload rate cannot be ignored and obviously the opposite would be true in determining the measure of the less carload rate. For this purpose it is a convenience to deal with class rate scales on uniform bases and contained in the same tariff tables. Separate scales of less carload class rates would necessarily make such tabulations more complex or require refer- [fol. 4940] ence to other tables or other tariffs.

At best, the rate structure of any territory is complex and this situation has been the subject of continuing efforts over the years both on the part of the carriers and on the part of regulatory bodies, particularly the Interstate Commerce Commission, to obtain a simpler and more readily understood basis of rates. Separate structures of class rates for carload and less carload quantities would introduce an unnecessary and complicating refinement which in the end would serve no practical purpose.

Commr. Aitchison: You may stand aside, subject to further cross examination.

(Witness excused.)

Commr. Aitchison: Whom do we hear next for the Official Lines?

Mr. Healy: That is all we have at this time, Mr. Commissioner, except the printer made a mistake in Exhibit 61. Section 1, Sheet 1, the correct figure is 226.

The exhibit now shows the number of first class carload ratings as 26. The correct figure is 226.

That is all we have at this time, Mr. Chairman. Thank you.

Mr. Bell: May I call Dr. Duncan?

Commr. Aitchison: We will take Dr. Duncan at this time.

Mr. Bell: Dr. Duncan, will you take the stand?

[fol. 4941] Dr. C. S. Duncan, previously sworn, testified as follows:

Direct examination.

Mr. Bell: I may say that Dr. Duncan's statement consisting of a little less than 13 pages was distributed to everybody the first thing this morning.

Commr. Aitchison: Proceed.

By Mr. Bell:

Q. Dr. Duncan, you testified at the Columbus hearing in this case?

A. Yes, sir.

Q. And at the conclusion of the hearing certain work sheets underlying Exhibit 104 introduced by Dr. Frederick of Austin, Texas, were furnished us.

A. After the hearing, yes, sir.

Q. And you have since examined those work sheets and the exhibit and Dr. Frederick's testimony?

A. I have.

Q. Have you prepared a statement, a brief statement, which you would like to orally state on the record in reply to Dr. Frederick?

A. I have.

Q. Will you proceed to give it?

A. In response to a question asked me respecting Dr. Frederick's testimony and Exhibit 104 in this case, I stated in my testimony at the Columbus hearing that I had read [fol. 4942] the transcript of testimony and had examined Exhibit 104 but had not had opportunity to see the work sheets from which this exhibit was compiled. Since the Columbus hearing I have had opportunity to examine these work sheets, which are in five bindings, one each for five Texas industries and set out in Exhibit 104 as follows:

Walker's Austex Chili Company, Austin, Texas, pages 2 and 3.

Brenham Cotton Mills, Inc., Brenham, Texas, page 4.

Superior Products Company, Dallas, Texas, page 5.

Sche-Rose Manufacturing Company, Dallas, Texas, page 6.

Round Rock White Lime Company, Round Rock, Texas, page 7.

I find that the work sheets cover the actual freight bills paid on shipments, both outbound and inbound, from stated origins and destinations.

Q. That is, those were the statements. You haven't been able to check the freight bills?

A. I haven't been able to check the freight bills.

Q. Proceed.

A. There are copious references to tariffs from which calculations have been made as to what the freight charges would have been had the shipments moved under calculated Official territory rates. These figures appear in Exhibit 104.

I have not examined the basis of these calculations, nor has any tariff expert among us had the time which would be required to check the calculations. I am not, therefore, [fol. 4943] in a position to comment on the accuracy of the calculated Official territory rates, except as to one instance. What I shall have to say will deal with other features of the work sheets.

I shall state very briefly the substance of the general and opinion testimony of Dr. Frederick before analyzing the showing of these five industries, called typical of the industries in the Southwestern territory, as set forth in Exhibit 104, in the light of the data revealed in the work sheets.

Dr. Frederick testified that the operations of these five industries are restricted in their activities, in their earnings, of markets by class rate discriminations. (Transcript, page 2105.) He later testified on cross examination that he was not trying to match up the situation of these companies with any competitor at all, that all he was trying to do was to show that here are five concerns in Texas which, due to the rate situation, had to pay more than he thought they should have paid for rail transportation service and that he was not viewing the situation of these industries from the standpoint of competitive markets (transcript, page 2111).

In response to a question as to whether or not Exhibit 104 had been prepared without any consideration whatever for any actual competition, Dr. Frederick stated that what he meant there by "competitive conditions was whether one or the other of these companies might sell more, perhaps in [fol. 4944] another area, if there were lower rates and that such competitive conditions had not been taken into consideration. He said that Exhibit 104 is merely a statement of what these companies did pay (transcript, 2114).

He testified that he was not saying that the freight rate is a deterrent to these people doing business but all he was saying is that, due to the freight rates these people have to pay, they pay too much (transcript, page 2112). Here are his own words:

"All I am saying is that, due to the freight rates these people have to pay, they pay too much. Whether they ship to Mountain Pacific Territory or whether they ship to Southern Territory or whether most of their traffic is within Southwestern Territory is immaterial from the standpoint of the profit and loss statement of the company." (ibid)

Commr. Aitchison: Is it necessary to have this witness testify as to what another witness testified, to the extent of several pages?

Mr. Bell: I think it is important, Mr. Chairman, in order to fully comprehend the significance of what follows. This is a very brief summary of Dr. Frederick's statement.

Commr. Aitchison: It does not seem to be very brief, and it is unnecessary for one witness to testify to what another witness has testified.

Mr. Bell: This is merely——

[fol. 4945] Commr. Aitchison (interposing): The record speaks for itself, Mr. Bell, and I have ruled.

Mr. Bell: What was the ruling?

Commr. Aitchison: The ruling is, it is not proper for Dr. Duncan to give an extensive resume of the testimony of a witness already in the record.

Mr. Bell: Unless I am very much mistaken that has previously been done, but what part of it do you desire copied?

Commr. Aitchison: I don't desire any of it copied. I think it is improper and incompetent for a man to attempt——

Mr. Bell (interposing): This man——

Commr. Aitchison (interposing): Will you permit me to make the record, Mr. Bell?

Mr. Bell: Yes, sir.

Commr. Aitchison: Kindly take your seat until I finish and then I will give you an opportunity to express yourself.

It is improper for a witness to make an extensive statement under oath as part of his testimony as to what he has deduced from the reading of the transcript of the testimony of another witness. The transcript speaks for itself.

Mr. Bell: And he is referring to the pages of the transcript where it can be found, and I submit that in order to fully understand his subsequent analysis of these exhibits and work sheets it is important that this statement be introduced into the record.

[fol. 4946] This man is appearing here as an economist and you have given wide latitude to the others who have testified in like character in this case.

Commr. Aitchison: The testimony with respect to the pages he can cite. He has apparently referred to pages 2001, 2113, 2110, 2122, 2116 and 2123. He can comment on this testimony, but it is not necessary for him to testify what the other man testified to.

Mr. Bell: Where do you desire that we start in this 13-page statement?

Commr. Aitchison: He can begin at the top of page 5, I should say—and also he referred to pages 2105, 2111 and 2114. In fact he has referred to all the pages virtually of Dr. Frederick's statement.

Mr. Bell: I don't see how it is going to reply to a witness without at least giving some idea of what the witness said, and I want to say again it is proper that this go into this record.

Commr. Aitchison: This is a statement of facts he is going to give us.

Mr. Bell: And he is giving you a statement of facts.

Commr. Aitchison: And it is not a debate between the witnesses.

Mr. Bell: It is not a debate. I don't see how we can discuss this exhibit or the work sheets unless we are permitted [fol. 4947] to have this go in, unless we are permitted to state what interpretation the witness put on the exhibit and that is what we are undertaking to do.

Commr. Aitchison: You are not going to be permitted to state it.

Mr. Bell: Well, I don't know what I can do if I am not going to be permitted to have the witness testify.

Commr. Aitchison: Oh, the witness is going to be permitted to testify, and if you don't know how to examine him I will, and I think I can produce everything that is competent in here, in his statement, and that he will be satisfied with it.

Mr. Bell: Of course I may be extremely ignorant, Mr. Chairman, but I thought I was abiding by rules and the past practice in this case, but I won't pursue the matter further; if you desire to examine the witness I have no objection.

Commr. Aitchison: You can start, if you will, at the top of page 5.

Mr. Bell: May I have permission to have this statement copied into the record without it being read?

Commr. Aitchison: You objected very st enuously to that being done at Columbus.

Mr. Bell: There is no use in stating a part of it if it is going to be chopped in two, Mr. Chairman.

I ask permission to have the statement copied into the record.

[fol. 4948] Commr. Aitchison: Dr. Duncan, in your study of the transcript of the testimony of Dr. Frederick did you deduce anything with respect to his testimony except that is written in black and white in the record already?

The Witness: As to what he said, I deduced nothing, but I did not agree with him, so I don't quite understand the question.

Mr. Bell: May I ask the Doctor a question?

By Mr. Bell:

Q. Dr. Duncan, without stating what Dr. Frederick said how can you state what it is you do not agree with, and you apparently are not permitted to state what Dr. Frederick said?

A. I suppose I can say, Mr. Bell, I do not agree with what he said.

Commr. Aitchison: You can also take up the various matters, can't you, as if Dr. Frederick had never existed or it had been somebody else who testified to it, whose testimony you hadn't read?

Mr. Bell: I think we can shorten it up if you will permit the reporter to copy this statement into the record and let me submit Dr. Duncan for cross examination.

I don't see any use, Mr. Chairman, in busting up halfway a 13-page thing. We boiled it down as much as possible in the hope we could present it orally.

Commr. Aitchison: The ruling has applied to two pages of [fol. 4949] your statement.

Mr. Bell: You have cut out the first five, as I understood you.

Commr. Aitchison: Well, it is more than two, that is right, the first four pages.

Mr. Bell: I don't think it would be intelligible if we are to jump in the middle of it and start with it. So far as I am concerned if you will permit the reporter to copy it as if read, that will be satisfactory.

Commr. Aitchison: If there is any discrepancy between what Dr. Frederick testified and what you swear he testified, is it your testimony that your testimony here is more true as to what he testified to than what he testified to as reported by the reporter?

Mr. Bell: You mistook entirely the purpose of the offer.

There isn't any doubt about the accuracy of the statements of Dr. Frederick's testimony, but how we are going to discuss in rebuttal what a man said, without saying what he said, I don't know. I may be ignorant, but may I have it copied into the record?

Mr. Bee: I would like to know what interest it is for Dr. Duncan to say Dr. Frederick he did not represent the industries. What testimony does that take care of to put into this record Dr. Duncan's statement that Dr. Frederick said he didn't represent the industry. If he testified to that it is in the record.

[fol. 4950] Mr. Bell: What are we arguing about? Why not copy it into the record?

Mr. Bee: You have got it here. Why copy it into the record?

Mr. Bell: If we could have gotten it down to six pages we would have done it.

Commr. Aitchison: If you don't think it is necessary for us to hear it——

Mr. Bell (interposing): I would like very much for you to hear it, but I don't want it chopped up so it will be unintelligible, so it might just as well — copied into the record as to have part of it eliminated.

I will tell you what it is——

Commr. Aitchison (interposing): You don't need to do that. This may be copied in.

The Witness: Dr. Frederick testified further that he had made no study of the financial condition of the railroads of Texas or of Southwestern Territory, or of their requirements in the light of the difference between the rates in Official territory and the going rates in Texas and the Southwestern territory, (Tr. p. 2100-1) and that while he had only a very general idea of the financial condition of the railroads in Texas from 1931 to 1940, he thought it was not a healthy one. (Tr. p. 2113. He could not say what would be the reduction in rail rates or to what extent the railroads [fol. 4951] would be deprived of revenues if there were an equality established and the same rates were paid in the Southwest as in Official Territory. (Tr. p. 2110)

Although Dr. Frederick referred to the difference between the total charges actually paid by these Texas industries on inbound and outbound freight and the charges which would have been paid under computed Official Territory rates as an economic burden and, as previously stated, said that no competitive conditions had been taken into consideration, he did testify, in response to a question as to whether he was advocating equality or advocating the Official level of rates, that he was advocating one class rate level, mile for mile, the same in all territories. (Tr. 2122)

It should be pointed out in this connection that the witness does not hold steadfastly to his "economic burden" point of view. As stated above, he wants equality even though it means raising rates in Official Territory. The question was asked of the witness (Tr. p. 2116): "If that difference were eliminated by raising the Official rates to the Texas level, then your basis for saying that these concerns paid too high freight charges would be removed, would it not?" The witness answered: "If we have an equal basis with other parts of the country, that would be so. That is cor-

rect." The witness admitted also that if Official Territory [fol. 4952] rates were increased, there would be an increase in the amount of freight charges actually paid by these companies to the extent that they enter Official Territory. (ibid.) The freight charges, of course, would remain the same in Texas, in Southwestern, Southern and Western Trunk Line Territories as now if equality were attained by raising Official Territory rates. The total freight charges would be greater than as shown in Exhibit 104, since there would be an increase in inbound freight charges to every company cited, with one exception, for the reason that Official Territory is the greatest source of inbound traffic and that one company sells 18.3 per cent of its good- in Official Territory.

I may add that Dr. Frederick testified that he did not represent the industries mentioned in Exhibit 104 at these hearings. (Tr. p. 2123)

There seems to me nothing helpful in this kind of reasoning. Either the freight rates in Texas and Southwestern Territory are too high or they are not. They would not be changed except as to the relative position they hold if equality were attained by increasing Official Territory rates and yet, although the witness first states that the believes the charges actually paid are too much, he later expresses the opinion that he would be satisfied if those charges were actually increased, provided it were done by increasing Official Territory rates.

[fol. 4953] As statistical support for his thesis respecting economic burden, Dr. Frederick cited the five companies set out in Exhibit 104, all located in the State of Texas and producing a variety of commodities. It is claimed, as stated, that "these examples in this Exhibit are typical." (Tr. p. 2105) Five examples are certainly very few to be called typical of the industries of the Southwest.

For these five companies, Exhibit 104 shows the amount of goods, in pounds, shipped inbound and outbound, upon which freight rates were paid, also the actual freight charges paid, a per mile rate calculated for the purpose of showing what the freight charges would have been if the inbound and outbound traffic had moved at the computed per mile rate for Official Territory and, finally, the difference between actual freight charges and these calculated freight charges. The difference between the actual and calculated freight charges is called the "economic burden" or disadvantage borne by the Texas industries and this "economic burden"

is said to be what inhibits or restricts or handicaps or prevents industrial development in the Southwest. (Tr. pp. 2102, 2105, 2107)

The total of the freight charges on outbound and on inbound traffic and the difference between this total and the mileage computation on Official basis are stated for each of the companies. Both the total freight charges and the dif- [fol. 4954] ferences are compared to net sales, cost of goods sold, capital stock of the company or invested capital and, in some instances, with wages paid, for the purpose of developing a percentage relationship. Thus, the total freight charges actually paid are found to be a certain percentage of net sales or the cost of goods sold, or capital stock and, in the same way, the differences between actual and computed rates are expressed as a percentage of these same factors. As may be readily seen, there is a great variation in these percentages as among the five companies.

There is no information, either in the Exhibit or in the work sheets, on the very important matter of net profits realized from operations by these five companies. There is nowhere a suggestion as to what percentage freight charges should bear either to net sales or cost of goods sold or other factors in the particular industries.

I believe and I shall undertake to demonstrate from information contained in the work sheets that these five industries are not restricted in their activities, earnings or markets.

Walker's Austex Chili Company, Austin, Texas.

The data on this company as contained in the exhibit are shown on pages 2 and 3. It will be noted from page 3 that in 1941 the net sales of this company amounted to $690,578.24. The cost of goods sold was $444,970.01. The capital stock of the company is $200,000. If the books of the company are kept correctly, as one must suppose they [fol. 4955] are, the cost of goods sold includes inbound freight charges and outbound freight charges, since the total amount of freight paid was taken from actual freight bills. For 1941 this company turned over its capital almost three and one-half times and made a gross or operating profit of 35.6 per cent. The actual net profit for the year is not shown nor can it be ascertained from the work sheets, but a gross profit of 35.6 per cent looks like a successful business.

It can easily be demonstrated from Exhibit No. 104 and the work sheets that the distribution, sale and marketing

of the products of these Texas industries are over an extended territory and have not been restricted. Referring to the Walker's Austex Chili Company, Austin, Texas, on pages 2 and 3 of the exhibit it will be seen that the outbound products were shipped to southwestern states, including intrastate in Texas, to states in Southern Territory, Official Territory, Western Trunk Line Territory, Mountain-Pacific Territory, and to Canada. These were both less-carload and carload shipments. The inbound shipments which were carload, were from Texas points, Official Territory points, and Mountain-Pacific Territory points. Texas intrastate rates, Mountain-Pacific rates and Canadian rates are not involved in this investigation, although this computation includes amounts in connection with such transportation.
[fol. 4956] I generalize here upon this statement. The same situation respecting territories exists in connection with Brenham Cotton Mills, Inc., on page 4, the Superior Products Company on page 5, with the exception of the Canadian traffic, and the Sche-Rose Manufacturing Company on page 6, with the exception of Canadian traffic. Outbound shipments to New Mexico are shown on page 7 covering the Round Rock White Lime Company. However, more detailed information is set out in the work sheets to which I will now refer.

The work sheets for the Walker's Austex Chili Company show that in 1941 this concern sold and shipped its products, consisting of canned food and seasoning, to numerous points in 33 states, with one shipment to Canada. There were about 200 shipments to 57 points intrastate in Texas from this concern at Austin in 1941, for which the total difference in freight charges computed as previously stated, is $372.38. This concern, in 1941, sold and distributed its products to numerous points in the States of Texas, Arkansas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Kentucky, Mississippi, Tennessee, Virginia, Illinois, Indiana, Maryland, Michigan, Ohio, West Virginia, New York, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, New Mexico, Arizona, Utah, Wyoming, Idaho and California. This Texas company, realizing a gross profit of 35.6 per cent and reaching 33 of the 48 states of the Union, it seems [fol. 4957] to me, can not be said to be suffering from any economic disadvantage. Certainly its distribution has not been restricted. The total freight charges actually paid

on inbound and outbound shipments were only 8.5 per cent of net sales. This cannot be called an economic burden in any way restrictive in view of the financial and distribution showing.

Brenham Cotton Mills. The second company treated in the same way is the Brenham Cotton Mills, located at Brenham, Texas. Data are given on page 4 of Exhibit No. 104. It may be noted from these data that 54.1 per cent of the raw materials or inbound traffic comes from Official Territory and Official Territory takes 34.1 per cent of the finished product. The net sales of this company in 1941 amounted to $635,576.45 and the cost of goods sold was $561,743.18. The capital stock was $150,000. There was a capital stock turnover for the year of more than four times. A gross profit of 11.5 per cent was realized in that year. The total freight paid on both inbound and outbound shipments amounted to less than 5 per cent of net sales.

Examination of the work sheets shows that with few exceptions the inbound shipments consisted of textile machinery and apparatus, electric motors, etc., a fact which indicates that the plant was being expanded during 1941. The inbound freight charges on such shipments are of course not representative of ordinary conditions. No less than 40 [fol. 4958] shipments of this character were made from Atlanta, Georgia, and 13 shipments of textile machinery were from Biddeford, Maine. Other shipments were made from Charlotte, North Carolina, from Milford and Boston, Massachusetts. They were all charged into this one year and yet the total cost of freight, inbound and outbound, was less than 5 per cent of net sales.

As shown by the work sheets, the Brenham Cotton Mills, in 1941 sold and distributed its product to numerous points in the State of Texas, and points in the State of Arkansas, Louisiana, Oklahoma, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Florida, Georgia, Kentucky, North Carolina, Tennessee, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, Wisconsin, Arizona, Utah, Wyoming, Oregon, California, and to a point in Canada. There is a total of 32 states of the Union, to numerous points in which this concern distributed its product in 1941. This certainly shows no freight rate barrier or restriction.

Superior Products Company is shown on page 5 of Exhibit No. 104. This company, located in Dallas, Texas, did a considerably larger volume of business than the other companies cited in the exhibit. Net sales in 1941 were $800,364. The cost of goods sold was $503,367. The gross profit was approximately $300,000, or about 37.5 per cent. This includes all freight payments, both inbound and out- [fol. 4959] bound. The capital stock is $50,000 and the turnover for the year 1941 was sixteen times. There is no record of the age of this business but as of 1941 the surplus or undivided profits were about $160,000. From this record the company appears to have done well in the past and to have done very well in the year 1941.

The business of this concern is of a somewhat unique type. It claims to produce 180 different items, among which are toilet preparations, perfumes, furniture polish, paste and ink.

As shown on page 5 of Exhibit No. 104, in 1941, this company produced added value of approximately $300,000 at a labor cost of $8,728. This labor cost is between 9 and 10 per cent of the cost of goods sold and between 6 and 7 per cent of the amount of net sales.

These are very low percentages.

The work sheets show that in 1941 the Superior Products Company sold, shipped and distributed its products to about 455 different points intrastate in the State of Texas and to quite numerous points in the States of Arkansas, Louisiana, Oklahoma, Illinois, Kentucky, Indiana, Michigan, New York, Ohio, West Virginia, Virginia, Colorado, Wyoming, Iowa, Kansas, Missouri, Nebraska, South Dakota, Wisconsin, Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, New Mexico, Montana, Idaho, Arizona, Utah and California. The sale of the [fol. 4960] products of this company in these 34 states, including the State of Texas, disproves any possible contention that it has been restricted by freight rates or otherwise.

Sche-Rose Manufacturing Company is located in Dallas, Texas. It produces a bread-making compound and ships some chloride of lime. The company is evidently small for, as shown on page 6 of Exhibit No. 104, the total net sales in 1941 were only $26,000. The process of manufacture apparently is simple for wages paid constituted only slightly more than 10 per cent of net sales.

The work sheets show that this concern in 1941 shipped its product to about 70 different points in the State of Texas, the difference in charges on the bases heretofore stated being $377.03. It also shipped its product to points in the states of Oklahoma, Louisiana, Arkansas, Georgia, Florida, Alabama, Mississippi, Michigan, Pennsylvania, Colorado, Iowa, Kansas, New Mexico, Montana and California.

One cannot believe that this is a typical industry. From the meager data given the setup is subject to criticism. For example, in 1941 net sales amount to $26,000, yet office and administrative salaries were $6,500, or 25 per cent of net sales. Wages paid amounted to $2,660, or slightly in excess of 10 per cent of net sales. The capital stock of the company is $25,000, so that the turnover for the year was slightly more than one time. The company is obviously top [fol. 4961] heavy not only with capital stock but with administrative and office salaries. It could pay the entire freight charges of $4,302 on outbound and inbound shipments in 1941 out of these administrative and office salaries and still the relation of these salaries to net sales would not be out of line with other business.

Round Rock White Lime Company is another small company located at Round Rock, Texas, and produces a relatively low value commodity, lime and limestone. As shown on page 7 of the exhibit, the net sales for the year 1939 were $51,118.35, and the capital stock, $90,000. The total weight of outbound shipments was 13,768,420 pounds, and the total actual freight charges on these shipments, $24,044.43. This shows that the average freight rate per ton was slightly less than $3.50. In the column headed "Total Charges When Official Territory Rates Are Applied," the amount is shown as $19,995.41. As previously stated, no check has been made of these charges computed on the so-called Official Territory rate basis, and it cannot be said with certainty what kind of Official Territory rates have been used. However, it is my understanding that only class rates are involved in this case. Page 7 of Exhibit No. 104 shows, as stated, that the total outbound shipments were 13,768,420 pounds. At the estimated Official Territory rate cost of $19,995.41, the rate per ton is $2.90. From this it appears [fol. 4962] evident that Official Territory class rates could not have been used in this computation. As shown by the work sheets, with few exceptions all of this lime moved in

carloads. I am not a traffic or a rate man but I am informed by our traffic officials in the Association of American Railroads that this lime does not move on class rates. This instance seems to me to cast some doubt upon the character of rates used in determining the charges alleged to result from application of the Official Territory rate basis in connection with other industries. This and other instances can doubtless be readily checked by the Commission's representatives.

I am, therefore, of the opinion that there is nothing in Exhibit No. 104 or in the work sheets from which it was derived, to support any contention that these industries in Texas are in any way restricted in their markets by freight charges, but that the contrary is true.

[fol. 4963] Chairman Aitchison: Cross-examine.

Mr. Bell: Dr. Duncan is here not only for cross-examination on this testimony he has just given but cross examination of the testimony that he gave at Columbus, in accordance with my agreement with him.

Commr. Aitchison: Any cross-examination, Mr. Smelker?

Mr. Smelker: No cross-exmationation.

Mr. McCarthy: I have one or two questions I would like to ask.

Commr. Aitchison: Proceed, Mr. McCarthy.

Cross-examination:

By Mr. Charles McCarthy:

Q. Doctor, in referring to pages here I am going to refer to the pages in the mimeographed statement which was distributed at the Columbus hearing.

Mr. Bell: You are going to talk about his Columbus testimony?

Mr. McCarthy: That is right.

Mr. Bell: Have you got a copy of your statement there?

The Witness: Yes, sir.

By Mr. McCarthy:

Q. I would first like to refer to page 28 of your statement in which you make the statement that "the lower average annual earnings of workers in the manufacturing industries, especially in the South, but only to a lesser extent of

the Southwestern and Trunk Line territories, afford a distinct advantage in lower costs of manufacture as compared [fol. 4964] with Official territory."

Is it your idea, Doctor, that low wages and resulting low standards of living constitute an economic asset of the section?

A. No, sir.

Q. You do not suggest then that these lower standards should be put in effect in Official territory so that Official territory can compete more advantageously with the South?

A. No, sir.

Q. Is it not a fact, Doctor, that low wages are simply symptoms of economic ills?

A. That may be; that may be.

Q. And it is not your idea, is it, that workers in the South accept lower wages simply because they want to help the owners of the business?

A. No, it is not.

Q. Dr. Duncan, in the course of your testimony you referred several times to a pamphlet entitled, "Location of Manufactures 1899-1929," by Dr. Thompson. You have referred to that I believe at pages 16 to 18, page 40 and pages 43 to 45 of your statement.

Do you agree generally with the conclusions reached by Dr. Thompson in that pamphlet?

A. I agree generally with the conclusions to which I have referred here, yes, sir.

Q. You are familiar, I suppose, with the rest of the document?

[fol. 4965] A. Yes, I am familiar with it.

Q. I would like to refer to page 40 of your statement in which you quote from page 47 of Mr. Thompson's statement. The last sentence in that quotation as you have it is as follows:

"The extent to which this has taken place is seen in the narrowing of the extremes in wage jobs per 1,000 population—from 34 in 'other areas' to 124 in the primary area (Official Territory) in 1899 to 45 to 106, respectively, in the two types of regions in 1929."

Do the words "Official Teritory" appear in Mr. Thompson's pamphlet?

A. No, they do not. I think the testimony that I gave explains that I put in those two words.

Q. I see.

A. And that I thought, generally speaking, the outline of the report of Mr. Thompson was in accord with the outline in Official territory, not exactly.

Q. Do you have the report with you?

A. No, I didn't bring it; I am sorry.

Q. I have a copy of it here. I will ask you if that is the report to which you referred?

A. This is the report to which I referred.

Q. Will you turn to page 47 and tell me whether you correctly quoted from Mr. Thompson.

Isn't it a fact that instead of "primary area," Mr. [fol. 4966] Thompson says "primary areas;" that the word is plural. That is the third full paragraph on page 47, the last sentence.

Mr. Bell: The paragraph ending with "1929," about the middle of page 47.

The Witness: Yes, I see it. I was trying to find the word "areas"—"and in areas of concentration;" is that the one?

Q. I am referring to the last sentence, "The extent to which this has taken place is seen in the narrowing of the extremes in wage jobs per 1,000 population—from 34 in the 'other areas' and 124 in the primary areas in 1899, to 45 and 106, respectively, in the two types of regions in 1929."

A. You are correct; it should be "areas."

I notice another error I noticed before, and that is the fourth word of the quotation it is "the effect of redistributions of industry." It is plural—"redistributions of industry."

Those are certainly unintentional errors.

Q. I am sure of that, Doctor, but now I want to ask you another question.

Isn't it a fact that the primary areas that Mr. Thompson is talking about are the 97 cities which at that time had a population of 100,00 or more, no matter what territory they are located in, and not Official territory?

A. He referred to both.

[fol. 4967] Q. Isn't it a fact when he uses the term "primary areas" he is referring to the 97 cities having a population of over 100,000?

A. I think that is not correct.

Q. Let me read to you, then, Doctor, beginning the last full paragraph page 46. This is rather an extensive quotation, if the Commission please, but I would like to have it all in the record anyway:

"A type of industrial redistribution essentially different in character from those sectional shifts described above is seen in the changes in the distribution of wage jobs in urban, suburban, and other areas. In *other* to observe such movements data are shown for (a) the 93 cities having 100,000 inhabitants or more, (b) the related industrial areas adjoining these cities, and (c) the remainder of the country —referred to in the report as (a) 'areas of primary concentration,' (b) 'areas of secondary concentration,' and (c) 'all other areas,' respectively. Movement of an industry from one geographic division to another may, of course, indicate a desire to remove from a crowded urban location to one in a suburban or rural neighborhood, but such a regional move is likely to be made primarily in order to take advantage of more convenient supplies of materials, better coverage of the market, or more satisfactory labor conditions. On the other hand, to leave an area of primary concentration for a site in an adjoining secondary area [fol. 4968] usually indicates a desire chiefly for more manufacturing space, lower taxes, etc., in the less congested area. While it not infrequently happens that a plant removes from a primary area of one geographic division to a secondary area of another division in order to gain both kinds of advantages, nevertheless, in general, the two types of relocation are quite distinct in motive and effect.

"Some dispersion of industry is disclosed in the statistics for the areas of concentration. The primary areas, which as a group had about 45 per cent of the nation's factory wage jobs in 1899, did not quite hold that proportion through the following 30 years of rapid industrial expansion, their share having dropped to 44 per cent in 1929. These large urban areas did more than approximately maintain their 1899 share of the country's population. Their portion of that total increased in three decades from 22 to about 30 per cent. In the secondary regions adjoining the large centers industry grew relatively more than it did in the centers themselves, increasing the share of the total wage jobs reported in these outlying areas from 18 to 21 per cent. In all the more industrialized divisions, except

the East South Central—six in all—the secondary areas built up their share of the total industry.

"The primary and second areas, in which approximately two-thirds of all factory wage jobs are to be found today, account for only 3 per cent of the land area of the nation. [fol. 4969] The remaining 97 per cent is occupied by what are here termed 'other areas.' Although this vast region suffered a very considerable loss in its share of the total population by reason of the heavy migration to the large cities, it maintained slightly more than one-third of the nation's industry with but a small loss in percentage.

"A group of 287 manufacturing plants in the largest 50 cities, those reported as relocated in 1928 or 1929, reflected so strong a tendency toward decentralization as to suggest the possibility that data, if available, might indicate a recently increasing momentum away from the largest urban centers. The movements of these plants brought decided gains in wage jobs to the 'other areas,' and lesser, but nevertheless real gains to the regions of secondary concentration."

Now, Doctor, then comes your quotation on page 40. In the light of what went before do you still contend that primary areas means Official territory or were you mistaken in your use of it?

A. No. As I said before, and as you have read into the record, I think quite clearly he discusses both the items you have in mind, the concentration of industry in the large cities and in the general areas, and I have demonstrated later from the figures Mr. Thompson showed that the basis of this conclusion is found in the statistical data which it gathered.

Q. Doctor, I am not questioning the fact that in the course [fol. 4970] of this report he has discussed the two types of distribution which you have mentioned, but my question is whether or not when Mr. Thompson uses the term "primary areas" here he means Official territory or whether he is talking about the 97 cities having a population of 100,000 or more?

A. My judgment is that he is talking about the area of concentration and not the cities alone.

Q. Does he use the term "primary areas" as meaning Official territory, or doesn't he? That is a question which can have a yes or no answer.

A. In my judgment he does, yes, practically speaking.

Mr. McCarthy: Very well; that is all.

I would like to introduce, in behalf of the Tennessee Valley Authority, two short quotations from the report of Mr. Thompson. Shall I simply mark them and hand them to the reporter or should they be read into the record?

Commr. Aitchison: Off the record.

(Discussion off the record.)

Mr. Bell: I object to those quotations from that document. I don't know what they are, but I have no objection to anybody referring to the entire book.

Mr. McCarthy: If I recall the record correctly, when Dr. Duncan put in certain quotations from this the Commission ruled that any other party could introduce any other parts of the report.

[fol. 4971]; There are several other quotations in the course of that statement.

Commr. Aitchison: As I understand it you took certain data from this brochure and used it as part of your testimony.

The Witness: As part of an exhibit I put in.

Commr. Aitchison: Which was introduced as a part of your testimony.

The Witness: Yes, sir.

Mr. McCollester: May I see the two paragraphs?

Mr. McCarthy: Surely. It is the first full paragraph on page 9 and the last one on page 48.

Mr. Bell: I thought at that time, Mr. Chairman, it was understood, and I believe you so stated, that anyone was at liberty to refer to the entire document. I suppose that still stands if he wants to use part of it in his brief, but why copy a couple of quotations from the entire book out of the general context? We may be required to put in the whole thing.

Commr. Aitchison: He is entitled to put in any portion of it he wants to, not necessarily the whole thing.

That is covered by our rule of practice.

Mr. McCarthy: Then I offer in evidence the first full paragraph on page 9 entitled, "Sectional Shifts," and the last paragraph on page 48. Would the Commission care to have me read that into the record?

[fol. 4972] Commr. Aitchison: You might as well read it or let the reporter copy it.

Mr. Wagner: I also have about a dozen sentences in that document I would like to have copied into the record. I have marked my copy and the reporter can copy them.

Mr. Bell: I would like to know what they are. I don't have a copy of this thing.

Mr. McCarthy: I have marked these quotations.

Mr. Bell: Well, may I be shown the courtesy of seeing a copy of what you propose to introduce?

Mr. McCarthy: I am sorry; pages 9 and 48.

Mr. Bell: May I have a few moments recess to go over this thing with Dr. Duncan and find out what parts we want copied in the record?

Commr. Aitchison: Is there objection to this offer?

Mr. Bell: Yes, I objected to it.

Commr. Aitchison: On what ground?

Mr. Bell: Because they can refer to the entire document.

Commr. Aitchison: Oh, no.

Mr. Bell: And I see no reason for cluttering up the record.

Commr. Aitchison: The Rule of Practice 80 covers it.

Mr. Bell: I am sorry.

Commr. Aitchison: "Unless it is desired to read such matter into the record, and the officer so directs, true copies [fol. 4973] in proper form of the material and relevant matter taken from the document may be received as an exhibit, but other parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant."

I understand it was read into the record, the portion that Dr. Duncan referred to, but other parties should be afforded an opportunity to introduce in evidence in like manner other portions of such document if found to be material and relevant. The document itself will not be received, so they may offer in like manner, reading into the record just as Dr. Duncan did.

Mr. Bell: Do you want him to read this document into the record?

Commr. Aitchison: He has asked that that be done.

Mr. Bell: Then may I check it to see what else goes into the record?

Commr. Aitchison: Oh, yes. You may have that opportunity. The hearing isn't closed.

Mr. Bell: Is this the time it is being introduced as part of Dr. Duncan's cross-examination?

Commr. Aitchison: These two paragraphs are.

Mr. Bell: With the understanding that I likewise can read the book into the record after I examine what he puts in.

Mark the copy that goes in so we can examine it and find what you are putting in.

[fol. 4974] Mr. McCarthy: Page 9, the first full paragraph:

"Sectional Shifts.—While there has been a lively interest in the growth of industry in the South and West, the fact remains that only the East North Central division has been able thus far to challenge seriously the historical industrial supremacy of the manufacturing East, composed of the New England and Middle Atlantic divisions (Table 3). In these three divisions occurred the major part of the sectional redistribution of industry which took place from 1899 to 1929. Together they reported 75 per cent of all factory wage jobs at the beginning of the century and 70.2 per cent 13 years later. The combined share for New England and the three States of the Middle Atlantic division dropped from 52.2 to 41.4 per cent of the total for the country. While considerable growth, as measured by rate of increase, took place in the six other divisions as a group, their total increase in wage jobs during the 13-year period was less than that for the single East North Central division."

Mr. McCollester: I would like to have, in connection with that paragraph, the immediately following paragraph.

Commr. Aitchison: You can put it in.

Mr. McCollester: I thought it might be more convenient to have it all together.

Commr. Aitchison: Mr. McCollester is offering the following paragraph.

[fol. 4975] Mr. McCarthy: All right; this is a very short one. I don't mind him putting it in here.

Mr. McCollester: "At each Census from 1899 to 1929, wage jobs, expressed as a percentage of the total for the United States, exceeded the corresponding percentage of population only in the New England, the Middle Atlantic, and the East North Central divisions. In these three highly industrialized divisions changes in the industry proportions were considerable as compared with those in population. A pronounced decrease in the percentage of wage

jobs in the Middle Atlantic division accompanied a small increase in its proportion of the total population. In the East North Central division the opposite change took place, a slight decrease in its population percentage being accompanied by a large increase in its percentage of wage jobs. On the principal industrial frontiers—South Atlantic, East South Central, West South Central, and Pacific—the percentage of the total wage jobs increased, but only in the westernmost two of these divisions did corresponding changes take place in population."

Commr. Aitchison: You may continue, Mr. McCarthy.

Mr. McCarthy: Page 48, the last paragraph:

"This brief study has dealt only in a broad way with the subject of the location of manufactures since the beginning of the century. Practically no consideration has been given to the forces which have brought about industrial migration [fol. 4976] and determined location, although some quantitative measurement of those influences could possibly be made from data collected by the several divisions of the Bureau of the Census and from other business and statistical organizations. Nor has the subject of the probable economic and social consequences of further decentralization of industry found a place in this primarily descriptive study."

Mr. Bell: Now, what is the question?

Mr. McCarthy: That is all.

Mr. Bell: May I have an opportunity of looking this book over with Dr. Duncan and deciding what we want to put in, if anything?

Commr. Aitchison: Anything further of Dr. Duncan at this time?

Mr. Bell: Not at this time. We desire the privilege of recalling him if we want to put some more of this book in.

Commr. McConnaughey: Doctor, what do you consider the primary reason for the moving of industry in the last 10 years away from the so-called primary larger industrial centers?

The Witness: I consider these factors, in order: The rights of men of energy and vision, the climatic conditions, the availability of labor, and the availability of raw materials.

Commr. McConnaughey: The prime, fundamental reason for industrial leaving?

The Witness: Those are the reasons in the order as I [fol. 4977] would give them.

Chrmn. Alldredge: Doesn't congestion of human beings generally develop certain antidotes by the mere process of congestion?

The Witness: I think that is true, yes.

Chrmn. Alldredge: It is a combination of circumstances really, isn't it, that causes people to disperse from unduly congested areas?

The Witness: Not a single force, obviously not. That is why I gave him several.

Chrmn. Alldredge: Even failure to find parking space, if it becomes monotonous, might become an element, wouldn't it?

The Witness: In moving an industry, if you mean that, no.

Chrmn. Alldredge: Moving people out.

The Witness: Not monotony of trying to find a parking space.

Commr. McConnaughey: In the last 10 years you wouldn't consider labor the fundamental, primary reason for industry moving from the larger cities?

The Witness: The order in which I gave you the forces before are my best judgment. Labor is nothing unless management wants to use it. It has got to arouse that management first, in my opinion.

Mr. Bell: Are you through, Mr. Commissioner?

Chrmn. Alldredge: I started to pursue it, but I won't.

[fol. 4978] Commr. Aitchison: Arouse them to what?

The Witness: Organize them. Organize them and use them.

Commr. Aitchison: You don't give us anywhere in the statement the factor, in the process of relocation, proximity to markets where the product is distributed, if I recall correctly.

The Witness: No, it is in there.

Commr. Aitchison: Where?

The Witness: Always nearness to market. I have discussed that among the factors.

Commr. Aitchison: Well, I caught it as being a division of management, climatic conditions, availability of men, and availability of raw material. Where would availability of market come in that category—if I caught them correctly?

The Witness: I just mean in what I answered the Commissioner here it follows what I have said. My point in the previous testimony was to a considerable extent devoted to this one thesis that these factors which I have enumerated of management, climatic —, labor, raw materials, are stronger factors in determining the location of an industry than nearness to market.

Commr. Aitchison: You put that as a fifth factor?

The Witness: I put that after these others. In some cases there may be another factor.

Commr. Aitchison: What is that?

The Witness: Even such a factor as availability of water [fol. 4979] for the manufacturing process.

Commr. Aitchison: That is availability of raw material, isn't it?

The Witness: No, not the raw material in making the product.

Commr. Aitchison: You wouldn't consider water was raw material, then?

The Witness: Not in the making of any product.

Chrmn. Alldredge: I thought Commissioner McConnaughey asked you for your opinion as to the dispersion of industry from congested areas, and not the attraction of industry to other areas.

The Witness: My understanding of the inquiry, and the record shows, it shows what I thought was the primary factors in the dispersion of industry from a concentrated area.

Commr. McConnaughey: Quite right.

The Witness: Which meant I assumed the industrial advantage. Maybe I was mistaken.

Chrmn: Alldredge: But when it comes to dispersion of industry from congested areas then don't other factors enter the equation, such as the disadvantages of living and conducting business generally, that happen every day?

The Witness: If by dispersion——

Chrmn. Alldredge (interposing): Moving out from a congested area to one which is not congested.

[fol. 4980] The Witness: What you have in mind, you mean the same thing was brought up in all these quotations here; you are right; but that is decentralization of a concentrated urban area, not a sectional group as we were discussing.

Commr. McConnaughey: That is true.

Commr. Aitchison: Anything further?

Mr. Bell: One question, Doctor.

Redirect examination.

By Mr. Bell:

Q. Reference was made to lower wages in the South. Connected with that state whether or not there is a lower living cost in the South.

A. The costs of living are lower in the South than in the East.

Q. So that the purchasing value of the wage earner's dollar may be no substantially different. Isn't that right?

A. That is true.

Commr. Scott: How late does that statement vouch for?

Mr. Bell: Did you say "late"?

Commr. Scott: Yes.

Mr. Bell: You mean downward?

Commr. Scott: Yes.

Mr. Bell: These are extremely abnormal times now.

The Witness: The last figures I saw were for July, 1942.

By Mr. Bell:

Q. Doctor, briefly stated, in your examination of the work sheets underlying Exhibit 104 state whether or not you found that these concerns mentioned in there were distribu-[fol. 4981] ting their products in 34 or 35 States of the Union, and some of them in Canada?

A. That is true.

Q. Was there any indication whatever from the work sheets of a restriction in the markets of these Texas concerns used by Dr. Frederick in his Exhibit 104?

Commr. Aitchison: Isn't that all covered by what is to be copied in?

Mr. Bell: I thought I expressed a desire to have you hear just that part. That is all.

Recross-examination.

By Mr. Bee:

Q. May I ask the Doctor did you find that all those companies were sending to 33 or 34 States?

A. No.

Q. Did you find any of those companies were sending a material part of their output to 33 or 34 States?

A. Yes.

Q. Didn't you find in some instances that only 250 or 260 pounds a year moved to certain States?

Mr. Bell: All of the details are in his statement.

Mr. Bee: Please, will you let the witness answer, Mr. Bell, and not you.

A. As I recall, a small amount, 253 pounds went to Canada.

Q. Yes, sir, and didn't you find like amounts to some of the States?

[fol. 4982] A. Yes, relatively small amounts.

Q. How long did you have Dr. Frederick's work sheets?

A. I?

Q. Yes, sir.

A. A day and a half, I think.

Q. Do you know how long they were in possession of the counsel for the railroads?

A. I wouldn't know that.

Q. If they were in the counsels' possession for more than three months don't you think there was sufficient time to have checked some of the rates if you thought there was anything wrong with any of the rates that Dr. Frederick used?

A. Well, we are pretty busy people.

Q. May I ask you to go to page 7?

A. Of the statement?

Q. Of your statement.

A. Yes.

Q. You say, "If the books of the company are kept correctly, as one must suppose they are, the cost of goods sold includes inbound freight charges and outbound freight charges, since the total amount of freight paid was taken from actual freight bills."

Don't you know that none of the companies in the cost of goods sold include the outbound freight charges?

A. Prepaid freight charges, they ought to.

[fol. 4983] Q. If they are prepaid they may be included?

A. Yes.

Q. But when a man goes to ascertain the cost of his goods and he wouldn't know the destination of his sales, how can he ascertain his freight charges to include them as cost of the goods?

Mr. Bell: I might call your attention to the fact that Exhibit 104 includes both freight charges.

Mr. Bee: It does not say so.

Mr. Bell: Yes, it does, inbound and outbound.

Mr. Bee: There is nothing in the exhibit that makes that statement, Mr. Bell, and the exhibit speaks for itself.

Mr. Bell: I have got it right here.

Mr. Bee: So have I.

Commr. Aitchison: You have got a question that hasn't been answered.

Mr. Bell: Yes, sir.

By Mr. Bee:

Q. I asked, Doctor, how are we going to ascertain the cost of freight charges in figuring the cost of goods when you don't know where your destination is?

A. My understanding is that the freight rates set down here were obtained from freight bills.

Q. Is there anything in Dr. Frederick's statement that shows that he has included both inbound and outbound freight charges in the cost of goods sold?

Your counsel makes the statement definitely that that is [fol. 4984] in the exhibit.

Mr. Bell: I said both inbound and outbound freight charges are shown in the Exhibit 104 as stated to be the ones paid by the concern and compared to what it would have paid had it moved — classification rates.

Mr. Bee: No. Where does it say "paid by the concern"?

You put words into the exhibit that do not appear there, Mr. Bell. If you will let the exhibit speak for itself it will be better.

Commr. Aitchison: Apparently there is no necessity for answering your question.

Mr. Bell: All right.

Commr. Aitchison: Anything further, Mr. Bee?

Mr. Bee: That is all.

Commr. Aitchison: Any other cross-examination?

Mr. McCarthy: I have one further question.

Recross-examination.

By Mr. McCarthy:

Q. Dr. Duncan, you say the cost of living is less in the South. Could you tell us about how much less, what the percentage is?

A. I thought I had brought the figures to which I referred along with me, but I do not find them here, so I wouldn't care to answer from recollection.

Q. Are they substantially less?

A. Yes, they are substantially less.

[fol. 4985] Q. Are you familiar with the study of the Bureau of Labor Statistics which covers the estimated cost of living for a four person manual worker's family at maintenance level in 33 large cities as of September 15, 1942?

A. Yes, I have seen that.

Q. Isn't it a fact that except for New York and Washington and to a much lesser degree Cleveland and Detroit, that the figures show only slightly lower costs in the South than in the North?

Commr. Aitchison: That is not the way to get those figures in.

A. I haven't the figures, if it is permissible, that I have copied from the document to which he is referring.

Commr. Aitchison: How long will this cross-examination be?

Mr. McCarthy: I have just one more question if I could ask that.

Commr. Aitchison: All right.

Q. I would like to know, Doctor, whether for instance that report shows that the cost of living in Baltimore was $1,566.34 and in Memphis $1,567.03?

Commr. Aitchison: You are going clear outside the cross-examination. You brought this thing in, this report, that you have got in your hand there and then proceeded to cross-examine him on it by asking first if he knows about it.

Mr. McCarthy: He stated he is familiar with it.

[fol. 4986] Commr. Aitchison: Well, I am familiar with lots of things that aren't so, but that doesn't entitle them to be put in evidence.

The Witness: I don't know whether those figures are correct or not.

Q. You don't know whether those figures are correct or not?

A. No.

Mr. Bell: I have always said that there is one noticeable thing about these commerce cases, you learn so many things that weren't so.

Commr. Aitchison: Doctor, you are excused subject to recall.

The Witness: Thank you.

(Witness excused.)

Commr. Aitchison: We will suspend until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

[fol. 4987] AFTERNOON SESSION 2 p. m.

Commr. Aitchison: Proceed.

Mr. Bell: Mr. Chairman, I merely desire to read a few lines of this printed publication which conclude the two paragraphs mentioned by counsel for the TVA and followed by Mr. McCollester. What I wish to read completes the last paragraph.

"In the East—" This is on page 9 of this document—"In the East North Central Division the opposite change took place, a slight decrease in its population percentage being accompanied by a large increase in its percentage of wage jobs. Of the principal industrial frontiers, South Atlantic, East South Central, West South Central and Pacific, the percentage of the total wage jobs increased, but only in the westernmost two of these divisions did corresponding changes take place in population."

That is all that we desire to add to what has already been said.

Mr. Wagner: If the Commission please, I have several sentences that I would like to get into the record, but I believe that the parties are willing to agree that anyone may refer to any portion of this document on brief, and if so, why that would relieve the record to that extent.

Commr. Aitchison: Well, that doesn't leave us with a very good record. In the event you have to make up a record, you better put it in.

[fol. 4988] Mr. Wagner: If the Commission please, may I leave with the reporter the portion I want to be copied in the record?

Commr. Aitchison: Have you shown it to counsel?

Mr. Wagner: Counsel has had my marked pages during the noon recess.

Mr. Bell: He has, but we better make these marks a little more definite.

Mr. Wagner: My marks are the two perpendicular lines beyond the lines——

Commr. Aitchison: Off the record.

(Discussion off the record.)

Commr. Aitchison: Anything further, Mr. Bell, or Mr. Wagner?

Mr. Bell: No, I think not, if there is no further cross-examination of Dr. Duncan. I regret very much that I did not get the presentation made orally, because I think it would have been quite interesting and shown quite a distribution and no restriction of market.

Mr. Taylor: I will call Mr. Hamilton. Mr. Hamilton has not been sworn, Mr. Examiner.

L. S. Hamilton, was sworn as a witness and testified as follows:

Direct examination:

Mr. Taylor: May we have his exhibit numbered, Mr. Commissioner?

[fol. 4989] Commr. Aitchison: Exhibit No. 218.

(Exhibit No. 218, Witness Hamilton, marked for identification.)

By Mr. Taylor:

Q. Please state your full name.

A. My name is L. S. Hamilton.

Q. Where do you reside, Mr. Hamilton?

A. My address is 516 West Jackson Boulevard, Chicago.

Q. By whom are you employed?

A. Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

Q. I will show you the exhibit identified as 218 and ask you whether or not this exhibit was prepared by you or under your direction.

A. It was.

Mr. Taylor: We offer Exhibit 218 in evidence.

Commr. Aitchison: Without objection it may be received.

(Exhibit No. 218, Witness Hamilton, received in evidence.)

Mr. Taylor: Mr. Chairman, the testimony of this witness and the exhibit were distributed yesterday, and his qualifications and explanations of the exhibit are in the statement. Now, if there is no objection we are perfectly willing that it be copied into the record.

Commr. Aitchison: All right? Any objection?

Testimony of L. S. Hamilton on Behalf of Western Trunk Line Railroads

My name is L. S. Hamilton. My address is 516 W. [fol. 4990] Jackson Boulevard, Chicago, Illinois. I am Assistant General Freight Agent for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees). I have been connected with the Traffic Department of the Milwaukee Road since 1919. My first position was Rate Clerk and, later, Chief Clerk in office of the Division Freight Agent, which I occupied for approximately five years; then Chief Clerk to Assistant General Freight Agent, Chicago, for two years; then Chief Clerk to the Assistant Freight Traffic Manager in charge of rates and divisions, Chicago, for seven years; Chief Clerk to Freight Traffic Manager, Chicago, until appointed Assistant General Freight Agent in November, 1940, having supervision of rates on local traffic, also interchange traffic, within Illinois Rate Committee territory, and issuance and distribution of tariffs. Since August, 1941, I have been engaged in preparation of evidence and testimony in connection with freight rate cases before the Interstate Commerce Commission and various State Commissions in the territory east of the Missouri River.

I have been called as a witness in this proceeding on behalf of the railroads operating in Western Trunk Line territory to offer testimony in rebuttal of claims made by witnesses representing commercial interests in Western Trunk Line territory at the Columbus hearing. While the claims of these witnesses for a change in the class rate struc- [fol. 4991] ture to and from the cities or territories they represent were not in every case identical, they were akin to the extent that these witnesses expressed the opinion they should have a lower scale of rates than now exists, not only within the zone in which they are located, but, as well, between their particular area and Official territory.

Witness Tharp initially testified on behalf of the railroads operating in Western territory and expressed the position of those railroads that the existing territorial spreads in rates should not, at this time, be altered.

Witness Townsend expressed the opinion that the Official territory scale of class rates should be extended into the Twin Cities and Southeastern Minnesota on and east of the line of the Omaha Railroad, Minneapolis to the Iowa-Minnesota State Line. Witness Smith of Duluth concurred in *that expression and the extension of the Official scale of* rates to Duluth and stated that he had no objection to extension of the rates to the Minnesota-North Dakota border and to the Missouri River, south.

Witness Sundberg for Iowa does not favor any territorial groupings for the class rate adjustment but expressed the opinion that if there are to be boundaries set up, they might properly be at the Missouri River, the effect of his testimony being that the entire State of Iowa should be included in the Official territory class rate zone.

[fol. 4992] Witness Smith, Waterloo, Iowa, expressed the belief that the inter-territorial class rates between Iowa and Official territory should not exceed those within Official territory, and that between the South and Iowa, the class rate level should not exceed that which may be prescribed between the South and Official territory.

Witness Real, Topeka, Kansas, wants the boundary of Zone 1 pushed westward so that Topeka will be in Zone 1 instead of Zone 2 as at present and that whatever basis of rates may be prescribed as a result of this proceeding for the present Zone 1, be applied within the territory he described on page 4, Section 2 of Exhibit No. 117.

Witness Dyer of Wichita, Kansas prefers a uniform scale throughout the territory involved in this proceeding, but in event that does not come about, he would reroute the Western boundary of Western Trunk Line Zone 2 to include Wichita, and further, if the suggestion of Witness Real of Topeka should result in Zone 1 being extended westward to include Topeka, then the Zone 1 boundary should be rerouted in order to include Wichita.

The principal contention of the Minnesota and Iowa witnesses, which I have heretofore mentioned, for broadening of the Official rate territory to include a part of Minnesota and all of Iowa, is that the industries in those states are in competition with industries in Official territory

[fol. 4993] and that consequently they should have the same basis of rates. The witnesses from Topeka and Wichita stressed principally the competition with other cities located in zones further east, particularly Missouri River points located in Zone 1.

While I did not participate in the Western Trunk Line Class Rate Investigation, I. C. C. 17,000, Part 2, nor in the Consolidated Southwestern Cases, I. C. C. 13,535, it is my understanding from review of the reports of the Commission in those proceedings that the contentions of these witnesses are not new and appear to be almost identical with those put forth by witnesses representing the same areas in the proceedings mentioned.

My exhibit has been prepared for the purpose of showing that conditions have not changed since the various zones and rate relationships were established as result of the decisions in the Western Class Rate Investigation, I. C. C. 17,000 Part 2, 164 I. C. C. 1 and 204 I. C. C. 595, sufficiently to justify remaking of zones or any leveling of the class rates. Since this investigation involves class rates only, the exhibit is designed to indicate to the Commission conditions that influence the measure of rates on traffic of that nature within and between the existing zones in W. T. L. territory, and between that territory and Official and Illinois territory.

It will be noted in this exhibit that under Value of Manufactures as reported in the Census of Manufactures that [fol. 4994] certain cities or portsions of the territories are marked with an "x" which indicates that nothing was published because to have done so would reveal the actual or approximate business of some individual enterprise in the city or county. Under these circumstances, we have included in the exhibit all of the available information. This has a tendency to understate the total value of manufactures for any group of cities or portions of territory involved in the exhibit. The extent of the understatement cannot, of course, be determined.

The breakdown of the Value of Manufactures by counties in each of the Zone 1, 2 and 3 States eliminates the amount of undistributed value of manufactures not shown by counties but is included in the value for the State. This tends to decrease the value of manufactures by zones in W. T. L. territory when compared with C. F. A., where

values for States of Illinois, Indiana and Ohio have been used in total.

The proportion of undistributed value of manufactures for 1939 to total for each of the W. T. L. territory States used is as follows:

W.T.L. State	Total Value of Manufactures	Undistributed	Ratio to Total
Kansas	$464,353,506	$13,365,306	2.88
Missouri	1,388,056,267	78,120,511	5.63
Nebraska	273,524,581	3,214,417	1.18
Wisconsin	1,604,507,356		
[fol. 4995]			
Minnesota	845,771,514	102,697,945	12.14
Iowa	718,531,801		
North Dakota	43,767,082	4,274,097	9.77
South Dakota	81,171,887	8,579,546	10.57
Total	5,419,683,994	210,251,822	3.88

Class rates have been designed and most generally do apply to consumers' goods and to commodities that have reached a final stage or near to a final state of completion; therefore, such rates are applicable to what we term "high-class traffic." The volume of traffic of that description that may move within, or, from and to a particular area, is necessarily influenced by the extent to which the commodities may be consumed or produced within that area, and the density of population, to a very large extent, controls. A different situation may and often does exist in respect to raw products on which commodity rates generally apply. Those products, such as grain, coal, lumber and others that move in great volume, may be produced in areas where the population is exceedingly thin, and the density of the population, therefore, has little bearing on the volume. These matters always have been and should be taken into consideration in making rates; and, as far back as the history of class rates goes, major consideration has been given to factors that offer information as to the actual or potential volume of traffic. The Commission recognized differences existing in [fol. 4996] transportation conditions within W.T.L. territory in I.C.C. 17,000 Part 2 Investigation, 164 I.C.C. Pages 198 and 199. Also that Illinois territory was more akin to

Official territory as to transportation conditions, including those parts of Wisconsin in Illinois territory, 164 I.C.C 211.

Volume 164 I.C.C. 208, affords access to the solution that the Commission reached on the problem of fusing the inter-territorial rates, and indicates the recognition given to the different transportation conditions as between Official territory, including Illinois territory, as described in that report, and Western Trunk Line territory, as had been recognized in respect to different levels of rates and the fusing of those rates within and between Zones 1, 2 and 3 in W.T.L. territory.

Pages 1 and 2 of my exhibit offer a comparison of the population growth and the value of manufactures between certain cities in Central Freight Association territory and Western Trunk Line territory. The cities named were chosen as representative of the territories in which they are located, and it will be observed that for the cities located in Central Freight Association territory, the total increase in population, 1940 over 1930, was one per cent. For the cities located in Western Trunk Line territory, named on page 2, the increase in population during the same period was 4.8 per cent, indicating that the freight class rate struc- [fol. 4997] ture did not, during that period, retard the growth of those cities as compared with the cities in the alleged more favored area. It will be observed from line 10, page 2, that the population of the Twin City area had an increase of 6.2 per cent which would seem to be an answer to the allegation by Witness Townsend that there has been a loss of industries to that community because of the freight rate adjustment. The population of an urban area would not likely increase if its industries were being drawn away. The same may be said of Des Moines, Iowa and Cedar Rapids, Iowa, lines 11 and 12 of the same page. As proof of a much greater production of manufactures in respect to population in Central Freight Association territory versus Western Trunk Line territory, attention is called to the column "Value Per 1000 of Population—1933 and 1939", pages 1 and 2. Additional data on those pages shows the much greater importance of manufacture in Central Freight Association territory than in Western Trunk Line territory. There is a great difference in industry as between Western Trunk Line territory and Central Freight Association territory. In Western Trunk Line territory, industry

is largely agriculture and livestock and production related to those industries which results in a low ratio of class rate traffic; while, in Central Freight Association territory, industry is largely that of the kind that produces manufactured commodities of an entirely different nature and which is, to a major extent, class rate traffic.

[fol. 4998] Page 3 is self-explanatory and pictures some of the differences between Central Freight Association territory and Zones 1, 2 and 3 in Western Trunk Line territory and some of the differences between those zones. The detail of this information is shown on pages 4, 5 and 6. The population per mile of railroad, line 11, page 3, is particularly enlightening.

The fact that, as disclosed on pages 1 and 2, the value of manufactures in Central Freight Association territory increased at a considerably greater ratio than in W.T.L. territory, 1939 over 1933, must be considered in connection with the industrial centers, that is, those centers producing consumers' goods, were more seriously affected by the depression than the communities having a lesser degree of industrialization, and, for this purpose, page 7 of the exhibit has been prepared, which shows for that part of Central Freight Association territory used throughout the exhibit, and taking the year 1929 as representing 100 per cent, that area fell to 38.97 per cent in 1933 and recovered to 78.70 per cent in 1939 contrasted with Zone 1 where the value of manufactures fell to 44.08 per cent in 1933 and recovered to 75.34 per cent in 1939; Zone 2, which dropped to 42.76 per cent in 1933 and recovered to 62.74 per cent in 1939, and Zone 3 which receded to 46.66 per cent in 1933, and, in 1939 recovered to 67.83 per cent of the 1929 production.

There are many factors to be considered in respect to the [fol. 4999] greater increase in manufactures in Central Freight Association territory for the years mentioned as compared with Zones 1, 2 and 3 in Western Trunk Line territory. One of particular significance following the depression was the tremendous recovery of the automobile industry which reached its peak around 1929 and 1940, and it cannot be overlooked that the greater production of automobiles, parts and accessories is in Central Freight Association territory. Another factor of some significance is that with the end of prohibition in 1934, the distilling and brew-

ing industry came back into the picture, and, since the location of the larger of that type of industry is in Central Freight Association territory, including Illinois, the increase in manufactures, 1939 over 1933, is further augmented. A striking example is Peoria, Illinois, Line 20, page 1, of my exhibit, which shows a ratio of 283.2, and Evansville, Indiana, line 30, a ratio of 212.3.

Pages 9 to 28 of my exhibit furnishes detailed information in respect to population and value of manufactures for the areas included in W.T.L. Zones 1, 2 and 3, in the States of Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas. A recapitulation of this information is set forth in condensed form on page 6, contrasted with similar date for that part of Central Freight Association territory which has been referred to heretofore. These figures have been separated as to those [fol. 5000] for Central Freight Association territory and for Zones 1, 2 and 3 of W.T.L. territory. It should be observed that in a general investigation of this nature the average conditions in a territory should be considered. In Central Freight Association territory, as described on page 6, lines 9 to 14, population per mile of railroad in 1940 was 749. The value of manufactures per mile of railroad in 1939 was $505,494. In Zone 1, Western Trunk Line territory for the same years, population per mile of railroad, 313—value of manufactures $92,579. Zone 2 population per mile of railroad, 280; values of manufactures $64,754. Zone 3, population per mile of railroad, 203; value of manufactures $24,954. In this connection, value of manufactures per 1,000 population, as shown in the last column on page 6, should have consideration, the total for Central Freight Association territory being, for 1939 per 1,000 of population as of 1940, $674,969; Western Trunk Line territory Zone 1, $295,521; Zone 2, $230,995; Zone 3, $122,845. The foregoing depicts some of the average conditions in these territories and, as was stated by the Commission in report in I.C.C. Docket 17,000, Part 2, 164 I.C.C. 198: "Differences considered in fixing zone boundaries are the averages, throughout the areas, of traffic and population densities, operating conditions, jobbing and other commercial and industrial competitive situations, and the rate bases prescribed in other case. Although those conditions rarely change abruptly, zone boundaries must be fixed some- [fol. 5001] where, and thus to some extent arbitrarily but

based upon mature deliberation and informed judgment."

In setting forth the figures and averages as indicated in my exhibit, the lines of the rate zones have been strictly observed to the extent possible in showing population and value of manufactures; therefore, St. Louis, Missouri, as an example, is included in Zone 1, and Kansas City, Kansas, is included in Zone 2; likewise, Omaha, Nebraska. But St. Louis, Missouri, if shipping to or receiving class rate traffic from points in the east, has the Central Freight Association rate scale. If shipping westward or receiving freight from the west, the Western Trunk Line scale of rates applies. Kansas City, Kansas, and Omaha, Nebraska, if shipping eastward or receiving freight from the east, have rates made on basis of the mileage traversed through Zone 1 territory, but, if the movement is from or to points west, the rates are made on the basis prescribed for the zones applying in that direction. This is mentioned for the reason that the average figures for Zone 1 as to population and the value of manufactures is increased by including, for example, St. Louis, Missouri, in Zone 1, and, likewise, the figures for Zone 2 are inflated by including Kansas City, Kansas, and Omaha, Nebraska. Other situations could be mentioned but those are cited as examples and for the reason that those more heavily populated and heavier producing communities which are located on the border [fol. 5002] line might as well have been included in this exhibit, in the zone having the lower rates, but by strictly following, from a statistical point of view, the boundaries of the zones as prescribed by the Commission in I.C.C. 17,000, Part 2, the more thinly populated and less productive areas in respect to the showing which we are making in this presentation are, to some extent, favored. In other words, if Kansas City, Kansas, which is located immediately adjacent to the western boundary of Zone 1 with population of 121,458 and value of manufactures of $167,228,236, was taken out of the total shown for Zone 2 on page 26, the averages in population per square mile and the value of manufactures for that zone would be greatly reduced. Kansas City, Kansas, is in Wyandotte County and the average population per square mile for that county is 960.7 for 1940, whereas the average for Zone 2 in the State of Kansas is 38, including Wyandotte County. The value of manufactures for Wyandotte County in 1939 was approximately $177,000,000 compared with the total in Zone 2 of Kansas,

including Wyandotte County, of approximately $259,000,000.

The maps reproduced on pages 30, 31, 32 and 33 are complementary to the statistics by counties as shown on pages 9 to 28 inclusive, and are for the purpose of presenting a picture of the existing zones when considered with the statistical data mentioned of traffic conditions in detail within those zones.

[fol. 5003] It is the belief of the Western Trunk Line railroads that the information contained in my exhibit fully justifies the position heretofore taken that existing conditions do not warrant any alteration of the present class rate structure. Without going into further detail, the exhibit, in our opinion, definitely shows the great contrast in conditions as between Official territory and Western Trunk Line territory, and the considerable differences on the average as between the presently existing zones in W.T.L. territory which, we believe, graphically pictures the conditions that justify the higher lever of rates in Zone 1, of W.T.L. territory than applies in Official territory and progressively higher rates in Zones 2 and 3 of W.T.L. territory.

Mr. Taylor: You may cross-examine.

Commr. Aitchison: Any cross-examination? Apparently not.

Mr. Taylor: That is all, Mr. Hamilton.

Mr. Barron: Mr. Chairman, we have one more witness for the Southwest, Mr. Roberts, of Dallas. His exhibits were expressed last Friday. Unfortunately they have not been received, and with the permission of your Honor, we would like to put Mr. Roberts on some time tomorrow, if these exhibits are received in time to be distributed before he testifies.

Commr. Aitchison: All right. You call the matter up again then tomorrow.

[fol. 5004] Mr. Barron: Yes, sir, I will.

Mr. Hughes: Mr. Chairman, that concludes for the present the presentation of the Western lines.

Mr. McCollester: I have a witness I could call at any time, Mr. Chairman.

Commr. Aitchison: All right.

GEORGE B. ROBINSON, previously sworn as a witness testified as follows:

Direct examination.

By Mr. McCollester:

Q. You are the same George B. Robinson who testified on this hearing, in this proceeding?

A. Yes, sir.

Q. You are connected with the Division of Commerce of the State of New York?

A. I am.

Q. In what capacity?

A. Director of the Bureau of Planning of the Division of Commerce.

Q. For the purposes of this proceeding you prepared and identified, did you not, an exhibit which was marked as No. 160 and received in evidence, which was a reproduction of excerpts from publications relating to industrial progress in the South?

A. I did.

Q. Have you prepared a similar exhibit reproducing por-[fol. 5005] tions of later publications in order to bring the issue more nearly down to date?

A. I have.

Q. Is that the yellow covered document that you have before you?

A. It is.

Mr. McCollester: May that be marked, Mr. Commissioner?

Commr. Aitchison: Exhibit 219.

(Exhibit No. 219, Witness Robinson, marked for identification.)

Commr. Aitchison: These are all from the Manufacturers Record, aren't they?

The Witness: And from the Year Book of Manufacturers, the Blue Book of Southern Progress, an annual publication of the Manufacturers Record Publishing Company, which also publishes the Manufacturers Record.

Commr. Aitchison: Well, that is one of the documents that was referred to by a gentleman—I have forgotten his name.

Mr. McCollester: That is right; the editor of the Manufacturers Record.

Q. You have produced portions of the publication in the same way that you did in your Exhibit 160; is that correct?

A. Yes, sir.

Mr. McCollester: We offer Exhibit 219 in evidence.

Commr. Aitchison: Without objection it is received.

[fol. 5006] (Exhibit No. 219, Witness Robinson, Received in evidence.)

Mr. McCollester: You may cross-examine.

Cross-examination.

By Mr. Norman:

Q. On page 4, headed "Diversified Manufacturing in the South" what is included "in the South" there?

A. The South includes those States which are named, starting on page 10, at the top of the columns, in the "Economic Summary by States 1941."

It includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia.

Q. On page 9, for example, that is consolidated as to all of those States; is that right?

A. I understand that is a summary table of the following data by States for the region that is designated as the South by the Blue Book of Southern Progress.

Q. And the purpose of this exhibit is to show the extent to which manufacturing has developed in the South?

A. Yes, sir.

Q. Now, another witness for the State of New York has testified that the South ought to develop its manufacturing before it asks for rates on manufactured articles comparable to those where the development has taken place,

[fol. 5007] Mr. McCollester: I don't know of any witness who testified to that effect.

Mr. Norman: Dr. Van Meter certainly did so testify.

Q. I would just like to ask you how much further you think the South should have to develop its manufacturing before it got to that place?

Mr. McCollester: Well, I object to that as not proper cross-examination

Commr. Aitchison: I think it goes beyond the scope of the direct examination a great deal. He has not testified——

Mr. Norman: He what?

Commr. Aitchison: He has not made any deadline.

Mr. Norman: I know he has not made any deadline. That is what I am asking him to draw.

Mr. McCollester: You are cross-examining him on Dr. Van Meter's testimony.

Mr. Norman: Well, I will ask him this question then.

Q. Do you think the facts shown by your exhibit establish that the South has so progressed with its industry and manufacturing as to be in the class where it is entitled to rates on manufactured articles compared with those in other territories?

Mr. McCollester: I object, because the witness has not been offered as the witness to testify at all about freight rates, or how freight rates should be made.

Mr. Norman: I am not asking him about any freight rates.

[fol. 5008] Commr. Aitchison: This objection is sustained. This testimony, if it is material and relevant here at all is an impeachment or for the purpose of enabling us to give proper weight to the testimony of the editor of the Manufacturing Record, who testified as a witness in this proceeding.

Mr. Norman: The point is, Mr. Chairman, that they take both horns of their dilemma when it comes to the South. They say first you must build your mouse trap; you haven't built your mouse trap and therefore you are not entitled to rates on manufactured articles; and then, in the very next breath, representing the same interests, they come along and say, just what you have done, that you have developed your manufacturing to a point that it is just amazing. Now, one or the other, it seems to me, must be in possession of the facts.

Mr. McCollester: I don't think I need to argue the point.

Commr. Aitchison: No. I has been ruled on.

Mr. McCollester: All right.

Mr. Norman: That is all.

Mr. McCollester: That is all, Mr. Robinson.

Mr. Norman: Mr. Commissioner, I have been taken by surprise here. I had no idea I would be reached until tomorrow.

Commr. Aitchison: Is anybody else prepared to go on?

Mr. Norman: Mr. Henderson can go on, but he has——

Commr. Aitchison: Off the record.

(Discussion off the record.)

[fol. 5009] Commr. Aitchison: You may proceed.

T. M. Henderson, was sworn as a witness and testified as follows:

Direct examination.

By Mr. Norman:

Q. State your name and residence.

A. My name is T. M. Henderson; residence, Nashville, Tennessee.

I am Commissioner of the Nashville Freight Bureau (organized in 1910 as the Traffic Bureau of Nashville), which position I have held for the past 32 years. Prior to my connection with the Nashville Freight Bureau I was employed in the traffic departments of the Southern Carriers for a period of about 10 years in the capacity of rate clerk, chief rate clerk, and chief clerk, and my traffic experience covers a period of approximately 43 years.

I am a registered Practitioner before the Interstate Commerce Commission, holding certificate dated August 12, 1929, and am a member of the Association of Practitioners before the Interstate Commerce Commission and one of the regional vice presidents of that association.

I have been a member of the Board of Governors of the Southern Traffic League since its organization, June, 1918, and have served one term as president, several terms as chairman of its Board of Governors, and have been executive secretary of the League since April, 1930.

I am a member of the Traffic Committee, employed by the [fol. 5010] Southern Governors Conference, to prepare and present the rate evidence in these proceedings.

I appear in rebuttal of statements made to the effect that these proceedings are the result of politics, and that South-

ern industry is not supporting the effort to secure an equality of class rates and ratings with the class rates and ratings in Official Classification territory, and in rebuttal of statements that the establishment of commodity, or so-called column, rates to Official Classification territory, on the same level as rates within the Official territory can, and should, be obtained through individual or specific adjustments, inasmuch as the Official Classification lines, since the decision of the Commission in the case known as the Governors' Commodity Case, 235 I. C. C. 255-350, have not declined to join the Southern carriers in rates to Official territory made on the Official territory level.

I will show that organizations representing a large proportion of the manufacturing industry in the South are now, and have in the past, fully supported the position of the Southern Governors in their efforts to obtain a parity of class rates with the class rates within Official territory and, in fact, the movement to secure this parity of rates originated with the jobbing and manufacturing interests in the South, and not with the Southern Governors.

I will also show that as a practical matter the trouble can [fol. 5011] not be cured by individual or piecemeal adjustments.

In order to properly present this matter it will be necessary to give an outline of the membership and purposes of these organizations, with a brief history of their efforts to secure relief from the present class rate adjustment within, and from the South.

The Nashville Freight Bureau is a non-profit, voluntary association of merchants and manufacturers, incorporated under the laws of the State of Tennessee, with the principal place of business at Nashville, Tennessee. Its activities are directed toward the promotion and fostering of the commercial interest of its members and the City of Nashville, as a whole, in the matter of transportation charges, rules, and practices.

The Southern Traffic League is a corporation existing under the laws of the State of Georgia, with its principal office at Nashville, Tennessee. It is a non-profit, southern traffic organization, having in its membership many of the largest and most important shippers and traffic organizations in the South.

As Commissioner of the Nashville Freight Bureau I act in the capacity of general traffic manager, or traffic con-

sultant, for its members; handling rate adjustments with the carriers and rate committees of the carriers, formal and informal complaints before the Interstate Commerce Commission and the Railroad and Public Utilities Commission of the State of Tennessee.

The membership of the Nashville Freight Bureau includes [fol. 5012] practically every line of industry in Nashville, such as manufacturers of paper boxes; distributors of paper and paper articles; wholesale hardware dealers; dealers automobile accessories; producers of sand and gravel; manufacturers of brick and dealers in building material; retail department stores, manufacturers of lumber and hardwood flooring; dealers in farm implements; manufacturers of stoves and related articles; producers of cereal products; feed manufacturers; wholesale grocers; manufacturers of bed springs and mattresses; printers and dealers in office supplies; wholesale druggists; iron and steep fabricators; public utilities, manufacturers and dealers in machines and supplies; manufacturers of caskets; publishers of newspapers; cold storage concerns, ice manufacturers; wholesale dry goods and notions; contractors; producers of stone; manufacturers of candy; manufacturers of wood and metal culvert; plumbing and heating supply companies; manufacturers of work clothes and shirts; oil refiners and large consumers of coal.

Commr. Splawn: You mean, industrial consumption of coal?

The Witness: I didn't hear you.

Commr. Splawn: You mean, consumption of coal in the industries?

The Witness: That is right, and by the city of Nashville itself, in its various departments.

The City of Nashville, as a municipality, and the Cham[fol. 5013]ber of Commerce of Nashville, are members of the Bureau, so it can be fairly said that the Bureau represents every commercial and industrial interest in the city.

The membership of the Southern Traffic League is confined to actual shippers and bona fide traffic and transportation organizations, Chambers of Commerce, and so forth, so that the League represents the commercial and industrial interests more fully than would be indicated by the numerical membership. For example, I have no individual membership in the League; the Nashville Freight Bureau is a

member, and I have shown the wide and varied commercial and industrial interest represented in the membership of the Bureau.

I am the representative of the Nashville Freight Bureau in the activities of the League.

The same is true of a number of other organizations, such as the Atlanta Freight Bureau, the Chattanooga Manufacturers Association, the Charlotte Shippers and Manufacturers Association, the Cotton Manufacturers Associations of South Carolina, the North Carolina Cotton Manufacturers Association, the Georgia-Alabama Textile Traffic Association, the Southern Furniture Manufacturers Association, the Southern Newspaper Publishers Association, the Growers and Shippers League of Florida, the Harlan, Hazard and Southern Appalachian Coal Operators Association, the Jacksonville Traffic Bureau, the Memphis Freight Bureau, the Tampa Traffic Association and other similar organi-
[fol. 5014] zations, the Port Authorities of the States of South Carolina, Florida, Virginia and North Carolina. There is also included in the membership individual concerns engaged in the business of manufacturing, processing and distributing, grain and grain products, lumber, cement, textiles, canned goods, cotton and paper bags, brick, clay, clay products, sand, gravel, chemicals, paper, cigarettes, tobacco, vegetable oils, and other commodities.

The members are located in Atlanta, Georgia; Birmingham, Alabama; Charleston, South Carolina; Charlotte, North Carolina; Chattanooga, Tennessee; Chicago, Illinois, Cincinnati, Ohio; Clinton, Iowa; Danville, Virginia; Enka, North Carolina; Greensboro, North Carolina; Griffin, Georgia; Hamilton, Ohio; Hartsville, South Carolina; High Point, North Carolina; Indianapolis, Indiana; Jacksonville, Florida; Kannapolis, North Carolina; Knoxville, Tennessee; Miami, Florida; Mobile, Alabama; Nashville, Tennessee; New Orleans, Louisiana; New York, New York; Norfolk, Virginia; Orlando, Florida; Pisgah Forest, North Carolina; Richmond, Virginia; St. Louis, Missouri; Salisbury, North Carolina; Savannah, Georgia; Tampa, Florida; Toccoa, Georgia; Wilmington, Delaware; Wilmington, North Carolina; and Winston-Salem, North Carolina.

Speaking first with respect to the position and activities of the Southern Traffic League. The rates prescribed by the Interstate Commerce Commission in the Southern
[fol. 5015] Class Rate Investigation, Docket 13,494, 100

I. C. C. 513, decided July 7, 1925, and Supplemental Reports, 109 I. C. C. 300, decided April 12, 1926, 113 I. C. C. 200, decided July 19, 1926, and 128 I. C. C. 567, decided July 19, 1927, were never satisfactory to the traffic men representing the commercial and industrial interests in Southern territory.

These rates are considerably higher than advocated by the Southern Traffic League, in Docket 13,494, for application in the Southern territory and between Southern and Official territory.

These rates were considered and discussed by the members of the Southern Traffic League for several years, and at a membership meeting of the League, held in Atlanta, Georgia, March 21, 1934, the following six-point program was adopted:

1. To secure a reduction in the class rate level in the South.

2. To secure a readjustment and reduction in the inter-territorial rates from Southern to Official Classification territory.

3. To continue participation and activities in the Consolidated Southwestern Cases until they are finally disposed of.

4. To secure an equality of rates from the South to Southwestern and Western Trunk Line territories, with the rates from Official to Southwestern and Western Trunk Line territories.

[fol. 5016] 5. To bring about a simplification and liberalization of the rules and regulations, and packing requirements of the Consolidated Classification.

6. To bring about a more expeditious handling of rate proposals by the Southern Freight Association and other standing rate committees of the carriers.

This program was considered and unanimously approved, by the members at subsequent meetings of the League.

In an effort to carry out the first part of the program of the League, adopted at Atlanta, Georgia, March 21, 1934, the Board of Governors, in March, 1934, asked for an immediate conference with the executives of the Southern carriers, but it was not until May 24, 1935, that we were able

to arrange the conference, which was held in Atlanta, Georgia, on that date.

The Southern carriers advised that they would not consider a revision of the class rate structure.

The Southern Railroad and Public Utilities Commissions became interested, and after several meetings between the Board of Governors of the Southern Traffic League and the Southern Railroad and Public Utilities Commissioners, Mr. J. P. Wilhoit, at that time chairman of the Public Service Commission of Georgia, arranged for another conference with the carriers' executives, when the executives of the Southern carriers were again requested to give consideration to a downward revision of the class rates [fol. 5017] within the South, and the southern carriers again declined to consider any revision in the then existing mileage scale.

Upon the second refusal of the Southern carriers to consider a revision of the Southern Class Rate scale, the Board of Governors of the League held a special meeting at Atlanta, Georgia, September 3, 1935, and concluded to join the Southern Railroadand Public Utilities Commissions, in a petition to the Interstate Commerce Commission to institute a general investigation of class rates, and this action of the Board was unanimously approved at a membership meeting of the League at Greensboro, North Carolina, September 18, 1935.

The scope of the investigation was discussed at a number of meetings of the League, joint meetings of the League and Southern Railroad and Public Utilities Commissioners and interested shippers, not members of the League, and after all of the discussions, it was concluded to limit the petition for the investigation to class rates within the Southern territory, eliminating, at that time and in those proceedings, interterritorial class rates and intra and interterritorial commodity, or so-called column, rates.

Petitions, seeking the investigation as outlined, were filed on September 25, 1936, by the Southern Traffic League, the Association of Southern Railroad and Public Utilities Commissions, and by most of the Commissions individually. [fol. 5018] Similar petitions were filed by the North Carolina Traffic League and a number of the individual members of the Southern Traffic League.

Petitions were filed by the rail carriers, and by shippers outside Southern territory, to have the scope of the proceed-

ings enlarged to include interterritorial class rates, between the Southern and Official territory, which were submitted to all parties.

The League and others, parties to the original petitions, filed answers, urging that the investigation be confined to class rates within Southern territory, and protesting against any broadening of the issues as set out in the original petitions. Our objections were overruled and the Commissions instituted Southern Class Rate Investigation, Docket No. 27655.

We insisted that the investigation be limited to the class rates within Southern Territory because we felt that the high level of class rates within the Southern Territory was the root of the evil and the foundation of the whole trouble. It was our thought that the investigation of these rates would be a fairly simple matter, involving a relatively small record and could be disposed of in a relatively short time, and that with reasonable class rates within the South, reasonable interterritorial class rates would automatically follow.

Our efforts to secure a revision in the class rates received much publicity in the newspapers; the Southern Governors [fol. 5019] became interested; had several meetings with the Southern Railroad and Public Utilities Commissions and the Board of Governors of the League, and at a meeting in Atlanta, Georgia, May 11, 1937, the Southern Governors took the matter in their hands and concluded to file a separate complaint involving certain commodities, which are included in Docket No. 27746, State of Alabama, et al., vs. the New York Central Railroad Company, et al., reported in 235 I. C. C. 255. This case was placed in the hands of a special committee of three Southern Governors, of which Honorable Bibb Graves, at that time Governor of Alabama, was Chairman.

The Southern Class Rate Investigation, Docket 27655, was placed in the hands of a special committee of three Southern Governors of which Honorable Gordon Browning, at that time Governor of Tennessee, was Chairman.

The Southern Traffic League intervened in favor of complainants in the Governors' Commodity Case, Docket No. 27746, but the League, as such, took no active part in the case, because the attorneys employed by the Governors, employed rate experts, statisticians, and so forth, to prepare

the necessary data and made their own arrangements for commercial witnesses.

Both traffic men employed by the Governors in that case, were members of the Southern Traffic League, but were not employed as representing the League. They were authorized, however, to testify that the League advocated the [fol. 5020] rates sought, that is, the same level as within Official territory.

While these cases were on the docket of the Commission, and before the commodity rate case was heard, numerous petitions were filed by interests in the East to consolidate Docket No. 27746 and the Class Rate Case, Docket 27655, and the Southern Traffic League, and others, filed briefs in opposition to the consolidation, and the petitions for the consolidation were denied.

The Governors' Committee, in charge of the Class Rate Investigation, Docket No. 27655, employed counsel and made plans for the presentation of that case, but the hearing was delayed, from time to time, and the committee in charge finally concluded that the time was not opportune for the presentation of the class rate case, and on request of counsel, representing the Governors, these proceedings were discontinued, without prejudice to future consideration, by order of the Commission dated April 11, 1938.

At a membership meeting of the Southern Traffic League, held in Charlotte, North Carolina, March 15, 1939, at which members of the Railroad and Public Utilities Commissions of Tennessee, North Carolina and Florida were present, the League unanimously adopted a resolution to request the Interstate Commerce Commission to reinstate the Class Rate Investigation, and a special committee of the League was appointed to personally present the petition to the Inter- [fol. 5021] state Commerce Commission.

Commr. Aitchison: May I interpose there? Now, down to this time, if I have followed your narrative correctly, nothing has been indicated which showed that you were interested in getting a uniformity of classification as between the two territories; other than covered by Point 5 in the six-point program adopted in 1934; is that correct?

The Witness: Mr. Chairman, our idea at that time was to take, as we thought, the quick course to secure uniformity; in other words, we felt if we could get an equal level of rates and classification within the South, that automatically

we would get it interterritorially; in other words, if the rates within the South were on a parity with the Eastern scale, the rates and classifications the same, there could be no argument in our minds about having interterritorial rates on the same basis.

Commr. Aitchison: But I have not caught anything yet in your presentation which would indicate that you had in mind getting the same classification in the two territories.

The Witness: Well, it was not mentioned, but the equality of the rate was what we had in mind.

Commr. Aitchison: At that time the same disparity existed; did it not, with respect to different consists of the classes below first, in the Official and Southern classifications, both carried in the consolidated classification.

[fol. 5022] The Witness: That is right, yes. As I say, while the classification, as I recall it, was not considered in detail and was not included in the program, the whole idea was to secure a parity of rates, and to that, we would necessarily have to have a uniform classification. What I mean to say, the whole idea back of the program was to have an equality of rates, and without an equality of classification we could not get an equality of rates.

Commr. Aitchison: That implied also a uniformity then under your points, with the Western classification as well.

The Witness: Yes, sir.

Commr. Aitchison: Well, I don't want to interrupt you now further on that, but you can be thinking about it. I want to ask you later if you did not at one time have an opportunity in the South to get the Western classification applied in that territory, and there was so much opposition to it that it was withdrawn? I will ask you about that later, but in your subconscious mind you can be thinking about it in the meantime.

Mr. Grubbs: If the Commission please, while there is a lull here, there is a problem troubling me that I think ought to be raised. As I understand the nature of this testimony, it is presented as rebuttal to the testimony that was presented by the Southern railroads.

Commr. Aitchison: By Mr. Ribe and Mr. Ridell and others.

Mr. Grubbs: Yes, sir. Now, as I understand the rules [fol. 5023] of procedure, unless there is some special ruling to open and close the case, the Southern railroads opened

the case and then presented rebuttal and now this comes, it seems to me, in the nature of surrebuttal.

Commr. Aitchison: All right. Well, let him have surrejoinder. We won't have any trouble when we get done with this. We will see that you all have an opportunity to be heard.

Mr. Grubbs: That is all I want to know, if we will have an opportunity, in the event we see fit, to reply to the statements that are being made at this time. Thank you, your Honor.

Commr. Aitchison: You will have reasonable opportunity.

Mr. Norman: There should be some here at this hearing.

Commr. Aitchison: Well, we will later, after that.

Mr. Norman: And besides, I want to joint out that counsel says that the Southern railroads introduced their case first. We all know what kind of a case they introduced. They just didn't introduce. They waited until we went on the stand and then came forward with their case.

Commr. Aitchison: Well, so long as we get the facts out of here, we will act in the future and hope we act advisedly, and it is not so important as to the order in which we get those facts.

Mr. Norman: All right.

By Mr. Norman:

Q. Proceed, Mr. Henderson.

[fol. 5024] A. This committee, with a committee representing the Southern Governors and the Southern Railroad and Public Utilities Commissions, arranged for a conference with the Interstate Commerce Commission, Washington, D. C., May 31, 1939, when the Commission was asked to reinstate the investigation, and again urged to confine the investigation to class rates within the Southern territory. At that conference we were assured that our requests would be given consideration, but that the Commission, at that time, could not commit itself to confine its investigation to the limits requested by the League, the Southern Governors and Southern Railroad and Public Utilities Commissions.

Following our conference, the Commission issued its order of August 1, 1939, instituting a general investigation of the class rates, to, from and between all points in the United States, East of the Rocky Mountains, Docket No. 28300,

and at the same time, instituted, its investigation in Consolidated Freight Classification, Docket No. 28310, and Motor Carrier Classification, Docket No. MC-C 150.

In our Conference in Washington, D. C., May 31, 1939, we requested the Commission, in its study of the class rates within the Southern territory, to provide the following information for the record:

1. Cost studies in Southern and Official territories.

2. Classification analyses of ratings in the Southern and [fol. 5025] Official classifications, and exceptions.

3. Appropriate revenue tests.

4. Appropriate analyses of traffic, including character of traffic, traffic flows, and the determination of commodities moving on class rates and upon the basis of percentages of the first class rates.

The original notice to the public, and order against the railroads, indicated that the Commission would supply certain information, which it has done, and required the railroads to furnish other information, which was later eliminated from the order.

The membership of the Southern Traffic League was unanimous in its opinion that there should be an investigation of class rates, for the purpose of putting the rates within the South, and the interterritorial rates between the South and the North, on a parity with the class rates in Eastern or Official Classification territory, to remove these rate barriers.

During all of its discussions and considerations of the question, extending over a period of six years, there was no dissent from this position, and it was not until the formation of the Southeast-Southwest Shippers' Conference at Birmingham, Alabama, April 5, 1940, that any difference of opinion arose.

The Southeast-Southwest Shippers Conference is an organization, the membership of which is composed almost exclusively of the producers and shippers of raw materials, [fol. 5026] semi-manufactured products, and completely manufactured articles, the rates on which have been established on a satisfactory basis, through negotiations with the carriers, or by orders of the Interstate Commerce Com-

mission. (See State of Alabama, et al., vs. NYC R. R., et al., 235 I. C. C. 255-350 and cases cited therein.)

This group has little, if any, interest in class rates or classification ratings.

Several members of the League affiliated themselves with the Southeast-Southwest Shippers' Conference, and as a result of the Birmingham meeting, April 5, 1940, a difference of opinion did arise, with the membership of the Southern Traffic League.

As a result of this difference of opinion the Southeast-Southwest Shippers' Conference called a meeting in New Orleans, Louisiana, May 17, 1940, and Mr. W. A. Gunn, President, T. M. Henderson, Executive Secretary, and E. L. Hart, Traffic Manager, Atlanta Freight Bureau, all members of the Board of Governors of the League, were invited to attend, and discuss the difference of opinion, in an effort to iron out these differences, and present to the Commission a program satisfactory to all interests.

At the New Orleans Meeting the following resolutions were adopted by the Southeast-Southwest Shippers' Conference:

"Whereas, the prepared statement of President Gunn, Southern Traffic League, shows that the policies of the [fol. 5027] Southern Traffic League are in accord with the principles *announciated* by this group at its Birmingham, Alabama, meeting, on April 5, 1940.

"Therefore, Be it Resolved that we request the Southern and Southwestern Traffic Leagues to urge the Southern Governors' Conference and the Interstate Commerce Commission that the Class Rate Investigation exclude from consideration all carload rates regardless of how published, whether specific commodity, column, percentage of first class, or classification ratings."

The resolution was submitted to the members of the Southern Traffic League for a mail vote and a majority voted against same.

The resolution was again considered at a membership meeting of the League, in Greensboro, North Carolina, September, 1940, and was again defeated by a majority vote of the members present.

In Docket 13494, 100 I. C. C. 612, decided July 7, 1935, Chairman Eastman said:

"The rates in issue are class rates applicable, not to a particular commodity, but to a multitude of different kinds of relatively high-grade traffic. Neither points of origin nor points of destination are restricted. In Southern territory big shippers and little shippers, great cities and small towns, are alike interested in class rates, and there are no natural condifions affecting production or consumption [fol. 5028] which divide them into groups so far as such traffic is concerned.

Commr. Aitchison: Am I to judge from that that our then Chairman, Commissioner Eastman, was in error? You say that the members of the Southeast-Southwest Shippers' Conference are not interested in the class rates.

The Witness: I didn't understand you.

Commr. Aitchison: I am just asking whether or not Commissioner Eastman was in error, or there is some conflict in your statement at the top of page 15 that the Southeast-Southwest Shippers' Conference has little, if any, interest in the class rates.

The Witness: Well, that group has not, and they are the ones that are opposing this investigation.

Mr. Norman: But, that does not negative the idea that there are big shippers who do have an interest in it, and that is what Mr. Eastman says.

Commr. Aitchison: Big and little both, he says.

Mr. Norman: Yes; well, they are big and little, both, even though they can't all be big.

Commr. Aitchison: Well, the fair inference from what Commissioner Eastman then said was that everybody in the South was interested in class rates.

The Witness: Well, that is one purpose of the testimony, in rebuttal of statements that have been made, that industry in the South is not interested in class rates. We say it is. [fol. 5029] Commr. Aitchison: All except those of them that you have described at the top of page 15.

The Witness: The Southeast-Southwest Shippers' Conference; yes, sir, who do not ship on class rates.

Commr. Aitchison: All right. Clearly Mr. Eastman must have been wrong then in saying "there are no natural conditions affecting production or consumption which divide them into groups so far as such traffic is concerned."

The Witness: Well, so far as class rate traffic was concerned.

Commr. Aitchison: Yes.

The Witness: Of course, there are some big shippers that ship on class rates, and they are interested in the class rate adjustment. There are other big shippers who do not use class rates and they are not interested, but our point is that the big shippers and the little shippers, the big cities and small cities in the South, are vitally interested in the class rate adjustment.

Mr. McCollester: Except for those who are members of the Southeast-Southwest Conference.

The Witness: I said there are big shippers and little shippers in the South that are vitally interested in the rates.

Mr. Grubbs: So as not to interrupt Mr. Henderson when he begins to take up his next paragraph, I notice an argument begins at this point, and I would like to object to the [fol. 5030] argument that proceeds from this point on.

The Witness: I don't see any argument.

Mr. Norman: Well, the very next sentence says "There is, therefore, no foundation for the statements made by certain commercial traffic men in the South," and so forth.

By Mr. Norman:

Q. That is a statement of fact, is it not?

A. Yes, sir.

Commr. Aitchison: It all bears on something that none of you have read, and that is the question whether there is the demand from business and industry in the South for a revision of class rates, and also a question which is implicit as to whether it is in the best interests of the business and industry in the South that there should be a revision, whether they demand it or not. There has been testimony with respect to that very matter, and clearly Mr. Henderson is entitled to give us the benefit of his experience and knowledge of the history and the present conditions with respect to whether there is this demand which has been mentioned. Proceed.

A. (Continuing) The foregoing clearly indicates the general interests in, and the importance of, the measures and relationship of class rates to, from, and between, points in the Southern territory. There is, therefore, no foundation for the statements made by certain commercial traffic men in the South, and by witnesses of the carriers, that there is no demand from business and industry in the South for

a revision of class rates, to remove rate barriers and dis- [fol. 5031] criminations, and to establish a parity of class rates and a uniform classification, within the South and between the Southern and Eastern territories.

Commr. Splawn: Is that demand, Mr. Henderson, limited to between the South and Eastern territory?

The Witness: Well, no. I think the Southwest have put in their——

Commr. Splawn: I mean, so far as the South is concerned, is the only interest in the South in class rates, in the rates within the South and between the South and Official territory?

The Witness: No. Our interest is between the South and Southwest and Western Trunk Line as well. Our greater interest is between the South and Official.

Commr. Splawn: What is the position of your people as to this question of parity or equality of rates that you were speaking of in the first part of this statement? Do you want that applied throughout the territory involved in this investigation?

The Witness: Yes; we have no objection to that. Our principal interest, as I say, is in the rates between the Official and the Southern territories, but we concede that the people in the West and Southwest are entitled to like treatment, and we have no quarrel with that at all.

By Mr. Norman:

Q. Is it not also the position of the southern interests that they desire a parity of rates with Official Territory to and [fol. 5032] from these other territories?

A. Oh, yes; that is very definite, and that was one of the points in the original program of the Southern Traffic League.

Mr. McCollester: May I just observe—you may have covered it, but I failed to note in any thing that precedes the bottom of page 16, anything to support the very last part of that sentence at the bottom of page 16, that there is a demand for a parity of rates between the Southern and Western territories. It would seem to me that your whole history was to the effect that the southern interests were concerned with revising the class rates within the South and wanted the revision confined to a revision within the South, and I don't find any mention before that of any-

thing to do with the rates between the South and Eastern territories.

Commr. Aitchison: Well, you look at the top of page 7, Point 2.

Mr. McCollester: Right. I will take it back.

By Mr. Norman:

Q. Proceed, Mr. Henderson.

A. In supplemental report, 109 I. C. C. 323, decided July 19, 1926, Chairman Eastman said:

"We are also persuaded that any attempt at a final solution of the interterritorial rate problem, at least so far as southern border territory is concerned, should be postponed pending the outcome of the Eastern Class Rate Investigation. The entire interterritorial adjustment will [fol. 5033] therefore be held for such further consideration of all the issues relating thereto as may seem appropriate, after further hearings, following our decision in that investigation."

No further consideration, or modification, of the interterritorial adjustment has been made since the outcome of the Eastern Class Rate Investigation, 164 I. C. C. 314-483, Docket 15879, decided May 13, 1930.

The program of the League to secure a reduction in the class rate level in the South, and a readjustment and reduction in the interterritorial class rates from Southern to Official Classification territory, was adopted March 2, 1934.

In "Class Rates Within the State of Georgia," 209 I. C. C. 602, Docket No. 26699, decided July 9, 1935, Commissioner Splawn, in a concurring opinion said:

"In 1925, the Commission, in Docket No. 13494, Southern Class Rate Investigation, 100 I. C. C. 513 prescribed maximum reasonable rates for goods moving on class rates between points in Southern territory. Recently the adjustment of rates within, from, and to Southern territory has been subject to several attacks. I believe the Commission should reexamine the entire rate structure in this territory in view of the substantial changes in conditions which have taken place within the past eight years."

Petitions to the Interstate Commerce Commission, seeking an investigation of the class rates, were filed on Sep-

[fol. 5034] tember 25, 1936, by the Southern Traffic League, the Association of Southern Railroads and Public Utilities Commissions, by most of the Commissions individually, the North Carolina Traffic League and a number of individual members of the Southern Traffic League.

The Southern Governors Conference was organized at a meeting held in Atlanta, Georgia, May 11, 1937, at which time it was decided to file the commodity rate case, Docket No. 27746, by a committee headed by Honorable Bibb Graves, at that time Governor of Alabama, and to prosecute the class rate case, then pending, Docket No. 27665, under a committee headed by Honorable Gordon Browning, at that time Governor of Tennessee.

It will be noted that the Southern Governors did not come into the picture until eleven years after Chairman Eastman said that a final solution of the interterritorial class rates should follow the outcome of the Eastern Class Rate Investigation; seven years after the decision in the Eastern Class Rate Investigation; three years after the Southern Traffic League Committee itself to a program to have the class rates within the South and between the South and the East revised and reduced; three years after the Southern Traffic League requested a conference with the executives of the Southern carriers to consider such a revision; two years after Commissioner Splawn expressed the opinion that the Commission should re-examine the entire class rate structure in Southern territory; two years after the first con- [fol. 5035] ference the Southern Traffic League had with the traffic executives of the Southern Carriers with this end in view; two years after joint conferences between the Southern Traffic League and Southern State Public Utilities Commissions with the executives of the Southern carriers; two years after the Southern carriers twice declined to make any readjustment of the class rates; about one year after the Southern Traffic League, the Southern State Public Utilities Commissions and various traffic organizations in the South filed petitions with the Interstate Commerce Commission to institute an investigation of the class rates within Southern territory, and several months after the first investigation, Docket 27655, was instituted.

There is, therefore, no foundation for any conclusion, or statement, that these proceedings are the result of politics or that any politics are involved.

My own experience demonstrates the impracticability, in fact the impossibility, of handling commodity, or so-called column, adjustments individually, or removing the trouble by piecemeal adjustments.

First, we have to convince the lines serving Nashville that the competition exists, and the rates requested are necessary to meet the competition, before the matter is placed on the docket of the Southern Freight Association, and I will show later that it is not always possible to do this.

[fol. 5036] We then have to convince all the other carriers in the Southern territory that the proposed rates are proper and necessary.

When this is done the proposal has to go to the rate committees in the Official territory and they must be convinced—and this is always difficult and sometimes impossible, before the Southern carriers can authorize the publication of the rates.

When this is done, it takes an additional 45 to 60 days to have the rates published and made effective.

In the meantime, Southern manufacturers are unable to submit bids, on a competitive basis, with the manufacturers in Official Classification territory having lower rates.

For more than a year some of our manufacturers have been receiving invitations for bids, at delivered prices, on ammunition or shell shipping boxes, to destinations in the Official Classification territory.

The rating applicable on the kind, or type, of box on which we are being asked to submit bids is contained in Item 5800, page 30, Consolidated Freight Classification 15, which reads as follows:

"Boxes, ammunition or smokeless powder shipping, NOIBN, loose or in packages, minimum 24,000 pounds."

Boxes, described above, are rated fifth class, 45 per cent of first class, in the Southern Classification and 45 per cent [fol. 5037] of first in the Official Classification, and this rating applies interterritorially, from the South to Official territory.

The southern manufacturers pay 45 per cent of index 139 rates, whereas, the manufacturers in Official territory, shipping to points in Official territory, pay 45 per cent of index 100 rates.

Commr. Aitchison: These shipments were to be for the Government, were they?

The Witness: Yes, sir.

Commr. Aitchison: And were they delivered prices?

The Witness: That is the way the bids were sent out, yes, sir.

Commr. Aitchison: Would there be any matter of land grant rates involved there?

The Witness: Well, from Nashville I don't believe there would be to any point hardly in Official territory.

Commr. Aitchison: I see.

The Witness. There might be a few, but very little.

Commr. Aitchison: All right.

Q. (Continuing:) I have been handling, constantly, with the railroads, for more than a year, insisting that rates be established from Nashville to Official territory on a competitive basis.

At the March, 1942, meeting of the Southern Freight Association, 30 per cent of first class from the South to [fol. 5038] Official Classification territory and Southwestern Freight Bureau territory was approved on:

"Boxes, ammunition or shell shipping, wooden or wood, reinforced with metal, metal lined or not metal lined, CL, minimum weight 34,000 pounds, subject to Rule 34."

The 30 per cent basis, approved for general application from Southern territory to Official territory, has never been made effective, except to a limited number of points in southern Illinois and Indiana, located on the C. & E. I., I. C., L. & N., and Southern Railway, published in Item 2275A, page 19, of Supplement 36 to Freight Tariff 604, I. C. C. No. 87, issued by B. T. Jones, Agent and in Item 2392B, page 13, of Supplement No. 24 to Freight Tariff No. 90, I. C. C. No. 530, issued by W. S. Mercer, Agent.

I have asked for publication of rates, on this basis, to many specific points, during the past year, but rates from Nashville, Tennessee, on this description of boxes, have actually been published to only thirteen points; Blodgett, Drummond, Elwood, Elwood Ordnance Plant, Kankakee Ordnance Plant, Illinois, effective July 13, 1942, in Supplement 47 to I. C. C. No. 691, issued by R. H. Hoke, Agent, to Freeport and Galesburg, Illinois, effective February 15, 1943, and Hannibal, Missouri, effective February 27, 1943, in supplements 16 and 17 to I. C. C. 826, issued by R. H. Hoke, Agent.

Rates to Connersville, Indiana, Mansfield, Ohio, Marion, [fol. 5039] Ohio, and Muskegon, Michigan, have been published in Supplement No. 19 to I. C. C. No. 826, issued by R. H. Hoke, Agent, effective April 10, 1943.

I would like to call your attention right there to the fact that five of the points, or the rates to five of the points out of the thirteen, do not become effective until April 10, 1943, so there are only rates to eight points that have been made effective although the matter has been constantly up for over a year.

The rate to Mansfield, Ohio, was requested on June 3, 1942, authority for publication was issued by the Southern Freight Association on February 3, 1943, and the rate was published to take effective April 10, 1943.

Rates to Galesburg and Freeport, Illinois were proposed in Southern Freight Association Docket 1165, submittal No. 22708, dated September 1, 1942, and the rates were made effective February 15, 1943.

The same docket and proposal covered rates to Connersville, Indiana, Cleveland, Ohio, Dayton, Ohio, Mansfield, Ohio, Marion, Ohio, and Muskegon, Michigan, but authority for publication of rates to the latter points was not issued at the same time, with authority for publication of the rates to Galesburg and Freeport, Illinois, because, as stated by the L. & N., of the non-concurrance of Illinois Freight and Central Freight Association carriers, however, the concurrance of those carriers was later secured, and [fol. 5040] authority for publication was issued by Southern Freight Association, February 13, 1943, and the rates have been published to take effect April 10, 1943.

On April 29, 1942, I requested publication of rates from Nashville, Tennessee, to Burns City, Indiana; Fort Miflin, Pennsylvania; Hingham, Massachusetts, and Ione Island, New York.

On January 12, 1943, I requested publication of rates to Easton, Pennsylvania.

On January 20, 1943, I requested the publication of rates to Cumberland, Maryland.

Many other requests for rates to specific points have been made, but as previously stated, rates to only thirteen points have been published and it was not until February 20, 1943; that the L. & N. Railroad filed its proposal No. 14013 with the Southern Freight Association, suggesting the estab-

lishment of commodity rates from Nashville, Tennessee, to a representative list of destinations in the Official territory, 32 points in all, and this proposal appears on Southern Freight Association Docket 1191, under submittal No. 29552, dated March 2, 1943, and so far no authority has been issued for the publication of the proposed rate.

On September 2, 1942, I asked that competitive rates be established to apply on:

"Boxes, ammunition or shell shipping, wooden, with metal [fol. 5041] tops and bottoms, but not metal lined, minimum weight 34,000 pounds."

It was not until March 8, 1943, that the L. & N. Railroad filed with the Southern Freight Association, its proposal 14022, suggesting the establishment of rates to representative list of destinations in the Official territory, 50 points on the kind, or type, of boxes on which we requested rates on September 2, 1942. This proposal appears on Southern Freight Association Docket No. 1192, submittal 29602, dated March 9, 1943, and has not been acted on and no rates have been published.

One of our manufacturers recently received an invitation to bid on steel automobile truck bodies, delivered at Metuchen, New Jersey.

The rate from Nashville is second class, 85 per cent of first class, $2.10 per hundred pounds, minimum 10,000 pounds.

The competition to be met was at Detroit, Michigan, from which point the rates are: 72 per cent of first class, $1.03, minimum 10,000 pounds; 52 per cent of first class, 74 cents, minimum 20,000 pounds; 37 per cent of first class, 53 cents, minimum 30,000 pounds.

On November 9, 1942, I requested the Nashville lines to establish rates from Nashville to Metuchen, on steel truck bodies on a competitive basis, that is, the same rate per mile from Nashville to Metuchen as in effect from Detroit to [fol. 5042] Metuchen, which would have made the rates from Nashville minimum 10,000 pounds, $1.37 per hundred pounds; minimum 20,000 pounds, 99 cents per hundred pounds; minimum 30,000 pounds 70 cents per hundred pounds.

It will be noted that the lowest rate, and the only rate, from Nashville, to Metuchen, subject to a minimum of 10,-

000 pounds, is 204 per cent of the highest rate from Detroit to Metuchen, subject to a minimum 10,000 pounds; the rate from Nashville is 284 per cent of the rate from Detroit, subject to a minimum of 20,000 pounds, and 396 per cent of the rate from Detroit, subject to a minimum of 30,000 pounds.

On December 19, 1942, under his file 46164-C, Mr. F. A. Burke, General Freight Agent of the N. C. & St. L. Railway, Nashville, Tennessee, advised me that this matter had been carefully considered, and that he had been unable to develop competitive conditions which would warrant the establishment of the rates sought, and he was, therefore, sorry that he was unable to comply with my request in this instance.

Mr. Burke sent a copy of this letter to Mr. C. D. Quinn, General Freight Agent, L. & N. Railroad, Louisville, Kentucky, referring to his file Den-11348-50, and to Mr. O. S. Blackman, General Freight Agent, T.C. Railway, Nashville, Tennessee, referring to his file 32728019-B, and on December 23, 1942, I received from Mr. Quinn, and on December 31, 1932, I received from Mr. Blackman, advice to the same effect.

[fol. 5043] I, of course, have no way of knowing what investigation these gentlemen made, or how they arrived at their conclusions, but I do know that no representative of any railroad called on me for any information, other than that contained in my letter of November 9, 1942, advising the Nashville lines of the fact that the Nashville manufacturer had to meet Detroit competition and the rates necessary to meet that competition, and no representative of any railroad called on the manufacturer, who had received the invitation to bid on this contract, for any information concerning the competition he had to meet, or the rates necessary to meet such competition.

From my long experience in handling those adjustments that I have referred to, I think it shows conclusively that this situation cannot be handled by piecemeal and individual rates. Those rates are out of line, and the manufacturers have been unable to meet competition for over a year, and still we are without any rates; so that it just cannot be handled by piecemeal.

Coming now to the interests and the activities of the Nashville Freight Bureau in these proceedings.

When the Southern Traffic League adopted its program, March, 1934, I reported to the Board of Directors of the

Nashville Freight Bureau the action of the League, and I was instructed by a unanimous vote of the Board to cooperate to the fullest extent with the League, and others, in the [fol. 5044] effort to secure a revision of the class rates and the application of a uniform classification, to remove the rate barriers between the Southern and the Eastern territory, reflected in the Class Rate Adjustment.

This matter has been discussed at every meeting of the Board of Directors, Nashville Freight Bureau, since March, 1934, and in every annual report to the membership since that date, and there has been no change in these instructions.

Some of our members, particularly druggists and dry goods concerns, the manufacturers of cotton work clothing and shirts, candy and cereals, complain bitterly, and constantly, about the present situation, and about the delay in removing these rate barriers and handicaps.

These concerns ship on class rates and principally in less-carload lots.

Drugs, linoleum, cotton work clothing and shirts, candy and cereal products, in less-carload lots, are uniformly rated in Southern and Official Classification territories, and interterritorially.

Drugs, linoleum, cotton work clothing and shirts, in less-carload lots are rated 70 per cent of first class, but Southern manufacturers and distributors pay 70 per cent of index 139 rates, whereas, the manufacturers and distributors in Official Classification territory pay 70 per cent of index 100 rates.

Candy is rated 57 per cent of first class in Southern and [fol. 5045] Official territories and interterritorially, but the Southern manufacturers pay 57 per cent of index 139 rates, whereas, the manufacturers in Official territory pay 57 per cent of index 100 rates.

A concrete example is in the rates from Nashville, Tennessee, and St. Louis, Missouri, to Evansville, Indiana.

The short line distance, via the Louisville and Nashville Railroad, from St. Louis is 164 miles and from Nashville, via the same railroad, the L. & N., is 156 miles, and the rate on drugs, cotton work clothing and shirts, linoleum, LCL, from Nashville to Evansville is 69 cents and from St. Louis to Evansville is 54 cents.

The Nashville candy manufacturer pays 56 cents, whereas, his competitor at St. Louis, pays 43 cents per hundred points.

The manufacturer of cereal products is confronted with a worse situation. He ships 95 per cent of his products in less carload, and cereal products in less carload, move from Nashville and from Battle Creek, Michigan, where his principle competitor is located, on fourth class rates.

But from Nashville, 4th class is 55 per cent of index 139 rates, whereas, 4th class from Battle Creek is 50 per cent of index 100 rates. The Nashville manufacturer pays 60 cents per hundred pounds, on cereal products in less carloads to Louisville, Kentucky, a distance of 187 miles, and his competitor, at Battle Creek, pays 49 cents per hun-
[fol. 5046] dred pounds to Louisville, Kentucky, a distance of 314 miles.

The Nashville shippers cannot compete, at border points in their own territory, with their competitors in Official territory, at the same border points, although the distances from Nashville are substantially less, and the disadvantage rapidly increases as they try to go into the Official Classification territory, beyond the border points.

I, therefore, repeat that there is no foundation for the statements that there is no demand, from business and industry, for the establishment of a parity of class rates and a uniform classification, within the South and between the Southern and Eastern territories, to remove these rate barriers and discriminations.

Many members of the Nashville Freight Bureau ship on carload commodity, or so-called column, rates and on carload and less carload class rates.

We have a vital interest in the rates on many basic commodities or raw materials.

We have had numerous complaints before the Interstate Commerce Commission, involving the rates on coal, logs, lumber, grain and grain products, pig iron and other commodities, and our interests in freight rates is not confined to the class rate adjustment, but we feel that the merchants and manufacturers who ship largely, or even partially, on class rates are just as much entitled to reasonable and non-
[fol. 5047] discriminatory rates as those members who ship principally on carload commodity, or so-called column, rates.

Mr. Norman: That concludes your statement, Mr. Henderson?

The Witness: Yes, sir.

Mr. Norman: You may cross examine.

Commr. Aitchison: I am not sure that your statement covered this: You pointed out that in the last, I believe it was, supplemental report in the Southern Class Rate Case, Chairman Eastman indicated that the interterritorial class rate matter ought to be considered after the Official line scale had been made.

The Witness: Yes, sir.

Commr. Aitchison: Well, after that scale had been prescribed in Official territory, there was a further hearing on that, was there not; or, at least, there was a further report?

The Witness: In the Southern Class Rate Case?

Commr. Aitchison: No; in the Eastern case.

The Witness: I don't recall.

Commr. Aitchison: You gentlemen can correct me, if I am in error.

Mr. Eshelman: My recollection is that the supplemental report in the Eastern Class Rate case dealt with a New Jersey situation primarily. My recollection is — was 172, but I can't be sure. However, it would not deal with interterritorial rates to the South.

[fol. 5048] Mr. Grubbs: It dealt with the terminal groups.

Commr. Aitchison: Also, wasn't there an extension of the scale?

Mr. Eshelman: There may be; I am not certain.

Commr. Aitchison: Well, after the Eastern Scale finally was determined by the Commission, what steps were taken by the interests in the South, whom you are speaking for, to have the Southern Class Rate Case reopened, in order to finish the job which Chairman Eastman had indicated should await the disposition of the Eastern scale?

The Witness: Well, I don't recall that there was anything done up to 1934, when the Southern Traffic League undertook to get some revision through the carrier by voluntary action.

Commr. Aitchison: Now, why was that?

The Witness: Well, I just couldn't tell you, Mr. Chairman, why.

Mr. Norman: Well, there wasn't very much time between those two dates, was there?

Mr. Barron: That citation was 171 I. C. C. 481.

Commr. Aitchison: January 13, 1931, was the date of the decision, which made various modifications and findings.

The Witness: I couldn't tell you why it was not done sooner, other than the Southern Traffic League never had money enough to do much. We just had to do the best we could. That was probably the controlling reason.

[fol. 5049] Commr. Aitchison: Well now, passing that and going back to the other question which I indicated, you were active in the traffic work in the South during the period of Federal control?

The Witness: How is that, sir?

Commr. Aitchison: You were active in the Traffic Bureau in the South during the period of Federal control?

The Witness: Yes, sir.

Commr. Aitchison: Do you remember the Director General submitting for consideration to the rate regulatory bodies and the commercial interests certain scales which he proposed and asked for comments on them?

The Witness: Yes; I remember the scale being sent out.

Commr. Aitchison: Do you recall that in the case of the South he suggested two scales, alternatives; one was based on the Southern classification and the other based on an extension of the Western Classification to cover the South?

The Witness: I think that is right, but I don't recall any of the details of the scale.

Commr. Aitchison: Now, I wonder if you happen to know, and if you don't, you just say so, why that suggestion with respect to the extension of the Western Classification to cover the South, and the substitution of the Western Classification for the Southern Classification, met with such disfavor that the Director General dropped the proposition?

The Witness: Well, my recollection of it is that the pro-
[fol. 5050] posal of the Director General would substan-
tially increase our class rates.

Commr. Aitchison: That is correct, as I recall it, if I may be permitted to do a little testifying. There was quite a substantial increase in rates, but he later made one anyhow.

The Witness: Well, we couldn't do anything about that. He didn't ask us about that.

Commr. Aitchison: Well, we are looking for light. Now, there was a time when seemingly, barring the matter of the level of the rates, the proposal was made to the South which would have resulted in there being but two classifications resulting in the country instead of three, and my

understanding is that there was so much opposition to it that the Director General withdrew the request which he had made to the State Commissions for consideration, and also a request to this Commission for its advice.

The Witness: Well, I think that is correct, but the reason for it, as I say, as I recall it, was that he proposed substantial increases in our Southern rates, although it may have been uniform between the South and the West, we would have been further out of line with the East than we were then. It would have made the relative position with the Eastern territory worse than it was. True, he offered us an equality and a uniform classification with the Western territory, but he made our situation with respect to Official [fol. 5051] territory worse than it would have been and worse than it is now or worse than it was at that time.

Commr. Aitchison: I just wanted whatever explanation you could give for the benefit of the record.

The Witness: That is my recollection of it.

Commr. McConnaughey: Mr. Henderson, you said you wanted the sameness of rates to exist all over the United States, that is, all of the territory involved in this investigation; that is correct, is it?

The Witness: Yes. We are in favor of that.

Commr. McConnaughey: And you want that sameness of all rates to be lower so as to correspond to the present Official territory rates; is that it?

The Witness: Well, we have suggested that, because it was the best thing we could figure out after considering all the scales and constructing a lot of scales. We are more interested or concerned with the parity than we are with the absolute level. Now, we suggested to the Commission the way to bring that about is to apply the Eastern Class Scale. If the Commission thinks that something higher than that is necessary for uniform application, why I don't think we would find any complaint with it; just so it is uniformly applied and covered by uniform classification.

Commr. McConnaughey: And you want that regardless of what the economical effect might be upon industry in the [fol. 5052] country as a whole or upon the carriers?

The Witness: My own opinion is it would be beneficial to industry, particularly in the South.

Commr. McConnaughey: And the carriers?

The Witness: Yes. I think in the long run it would be beneficial to the carriers.

Commr. McConnaughey: That is all.

Commr. Aitchison: Cross-examine.

Mr. Grubbs: I wonder if it would be possible to defer cross-examination of this witness. I ask that only if it meets the convenience of the witness and the Commission.

Mr. Norman: The witness will be available tomorrow, if it is desired.

Commr. Aitchison: Anybody else prepared to cross-examine?

Cross-examination.

By Mr. Barron:

Q. Mr. Henderson, when did this Southeast-Southwest Shippers' Conference get together for the purpose of authorizing your appearing in this case?

A. For what?

Q. For the purpose of appearing in this proceeding.

A. Well, I think the organizational meeting was held in Birmingham in March, 1940. Let me see. I have the exact date here—or April, I believe.

Q. Well, you show on sheet 15 of your statement that there was a meeting at New Orleans.

[fol. 5053] A. That was the second meeting. Their organizational meeting was in Birmingham.

Mr. Norman: That is not his question, I don't think.

Mr. Barron: No.

By Mr. Barron:

Q. I just want to know when they decided to join together in prosecuting this case for the common benefit of the Southwest and the Southeast, as you put it.

A. I didn't say they joined for the benefit of prosecuting it for the benefit of the Southeast and the Southwest. The organizational meeting was decided to oppose the investigation altogether.

Q. That is the investigation. Now, do you know whether or not there was any meeting of the Southwestern shippers or State Commissions, such as Oklahoma, Texas and Arkansas, with the Southern Governors Committee?

A. You mean, during the pendency of these proceedings?

Q. Yes, sir.

A. Why, I think they had several meetings.

Q. Well, when did you decide that you would join hands with them, if you did join hands with them, in the prosecution of this case?

A. Well, we had already decided to prosecute the case; in fact, we had gotten the Commission to institute an investigation of the class rates within the South and between the South and the East.

[fol. 5054] I understand.

A. The investigation had been instituted at the request of the Southern Traffic League and the Railroad and Public Utilities Commissions. Now, later on the Governors organized their conference and they decided to take charge of the handling of it, and we were very glad to have them do it, and we have joined with them in all their efforts to get it done.

Q. Did that include the Governors of the Southwestern States?

A. Well, originally I think it was just the Governors of the Southern States.

Q. And subsequently the Southwest came in with you; is that right?

A. Well, I am not in a position to say what the Governors did in their organizational meetings. All I know was what was done at the Southern Governors Conference.

Mr. Norman: Mr. McDonald is going to take the stand a little later, and he can explain about that.

Mr. Barron: All right.

Mr. Norman: I don't think Mr. Henderson knows about that.

By Mr. Barron:

Q. Mr. Henderson, you are not speaking here for any Southwestern interests, are you, or the Southeast?

A. No. I am just speaking for the South.

Q. Now, in one of your statements on sheet 19, you say this: "There is, therefore, no foundation for any conclusion, or statement, that these proceedings are the result of politics or that any politics are involved." You are only [fols. 5055-56] making that statement on behalf of the Southern interests, are you not?

A. Yes. I am making that statement because I have shown prior to that that these proceedings were instituted

long before the Southern Governors Conference ever was formed.

Q. But you didn't have in mind any interests in the Southwest when you made that statement, did you?

A. No. I am not familiar with politics out there, or what brought it on.

Mr. Barron: All right. Thank you.

By Mr. Real:

Q. Mr. Henderson, since you prepared that *prepared* statement, have you made any study of the exhibit introduced by Dr. Aitchison at this hearing?

A. Since I prepared this?

Q. Yes, sir.

A. No. I just finished this last week.

Q. Would the destination level of freight rates and the destination classifications and exceptions thereto cure the competitive situation that you are complaining of?

A. You mean by "destination" different levels north and southbound?

Q. The destination level of rates and the destination classifications and exceptions.

A. Well, I guess it would.

Mr. Real: Thank you. That is all.

[fol. 5057] The Witness: Because our principal interest is in the northbound rates. It may not be satisfactory to the Eastern interests, though.

Commr. Aithison: Mr. Widell.

By Mr. Widell:

Q. Mr. Henderson, on page 14 of your statement about the Southeast-Southwest Shippers' Conference——

A. Yes, sir.

Q. —you referred there to the discussions and considerations of the question and that over a period of six years there was no dissent from this position.

A. In the Southern Traffic League.

Q. Until the formation of this conference that I speak of. Is it not a fact, Mr. Henderson, that in the Southern Traffic League meetings that antedated the April 5, 1940, meeting of the Southeast-Southwest Shippers' Conference, that there was a lot of difference of opinion regarding the

advisability and whether it was to the best interests to Southern industry?

A. There was not, in the meeting of the Southern Traffic League.

Q. You mean that the minutes of the Southern Traffic League will not show that there were opposing votes against this Class Rate investigation?

A. It never was put to a vote until after the March, 1940, meeting in Birmingham.

Q. But if there were dissents, it would appear in the [fol. 5058] minutes of the meeting; wouldn't it?

A. Yes, it would have, but there were not so it doesn't appear in the minutes.

Q. Well, do your minutes of your meetings merely show "passed" without any regard to the number of votes that might have been cast against it?

A. Mr. Widell, there was never any opposition in this proceeding until after the formation of the Southeast-Southwest Conference in 1940. Of course, the thing was discussed from different angles at different times.

Q. You mean then that this conference in April, 1940, just sort of sprung up without any previous consideration of this question?

A. No. I think you called a meeting for the purpose of opposing this investigation. That is my understanding of it. It didn't spring up until you sprung it.

Q. Of course, you understand that I could not form a conference of this kind all by myself, don't you?

A. Well, of course, you had to have somebody there with you.

Q. Now, if the others considered it of enough importance, there must have been some dissenting opinion regarding this in the South prior to April, 1940.

A. Mr. Widell, all of the members of the Southeast-Southwest Conference are not members of the Southern Traffic League, and a lot of them never have been members.

[fol. 5059] Q. And a lot of them have resigned since?

A. Only two.

Q. Only two have resigned from the Southern Traffic League since April, 1940?

A. On account of this investigation, yes—or three.

Q. Three. Who are they?

A. I don't think that is any of your particular business.

Commr. Aitchison: Well, I don't think it is of much interest to us, but we have been washing this linen here for quite a while and possibly the best thing to do is to get it out of your system, but let us not get personal about it.

The Witness: If you want me to answer the question——

Commr. Aitchison: No.

By Mr. Widell:

Q. On page 15 you say "This group has little, if any, interest in class rates or classification ratings." Now, is that just your own personal opinion, or do you know what all the interests of the various groups are?

A. I saw a list of those who attended the organizational meeting in Birmingham and I saw, of course, a list of those who attended the conference in New Orleans, and from the nature of the business I know that most of them are not interested in class rates.

Q. Take the Tennessee Products Corporation which, as you know, is one of the largest industrial concerns in the State of Tennessee, are they not interested in class rates? [fol. 5060] A. I don't doubt but what they ship some stuff on the class rates, but their major interest, I would say, is in the carload commodity rates, on the raw materials.

Q. Have you made any personal study on the class rates of any of these shippers who are members of the Southeast-Southwest Shippers Conference?

A. No, I have not. I just take it from the nature of their business that their principal interest is in the commodity rates, and class rates are more or less a minor consideration with them.

Q. Now, you were present at the meeting in New Orleans in May, 1940, were you not?

A. Yes; I was there.

Q. And to which you make reference on page 15 of your statement. Is it not a fact, Mr. Henderson, that you and the other members of the Southern Traffic League were favorably disposed to the resolution that you cite here?

A. No; It is not a fact. We are not even a member of that organization. All we did was to agree to submit that to the members of the League, for their vote.

Q. Don't you remember that you and Mr. Hart refrained from voting, for reasons that you thought were special for yourselves, and that Mr. Gunn did vote for this?

A. Well, I refrained from voting because I was not a member of the Southeast-Southwest Conference, and I didn't [fol. 5061] see that I had any right on a resolution they offered.

Q. But you know it to be a fact that Mr. Gunn did vote on it favorably, do you not?

A. I think he did; I am not sure, but he was not a member of the organization.

Q. President of the Southern Traffic League?

A. Yes.

Q. And he was at that time?

A. That is right, but he is not a member of the Southeast-Southwest Shippers' Conference; never has been and had no vote coming to him.

Q. In that open meeting, though, he voted for it?

A. Well, he may have. I think he did, but if he was not a member of the organization, he didn't have any business voting.

Mr. Widell: Thank you.

By Mr. McFollester:

Q. After the Commission's decision in the Eastern Class Rate case, do you know whether or not there was a proposal or whether or not the subject was discussed of reopening the Southern case for the purpose of dealing with the interterritorial rates?

A. I don't recall it, if it was.

Q. You don't recall any discussions on the subject with Southern interests who opposed a reopening of the proceeding for the purpose of dealing with the interterritorial rate situation?

[fol. 5062] A. No; I don't. I don't think I was present. If I was, I have forgotten.

Q. Was there any proposal that you recall following the Eastern case for reopening the Southern case, to reconsider the rate situation within the South?

A. None that I am familiar with, except the one I mentioned, where we asked the Southern carriers to revise those rates and then went to the Commission with it. The one I mentioned in my statement was the only one I know.

Q. Was that the time when you went to the Commission and then it was suggested that the interterritorial rates should be brought into it, and then the proposal to revise

the Southern rate situation was dropped? Do you recall anything like that?

A. No. In our petition to the Commission we confined it to an investigation of the class rates within the South, for the reasons that I stated.

Q. And you did not go through with that, did you?

A. Well, we are going through with it now.

Q. Well, at that time wasn't it dropped because there was a proposal—I am not sure whether it originated with the Commission or not—that it should be broadened to take in *the interterritorial rates*?

A. Well, it was broadened to take in the interterritorial rates in the beginning.

[fol. 5063] Commr. Aitchison: Well, you don't want to leave the impression that the Commission made any suggestion about what should be done, do you?

The Witness: Well, I don't know where the suggestion came from. I think it came from the Eastern shippers and the Eastern railroads, probably, but our original petition to the Commission was limited to an investigation of the class rates within the South. Now, as I recall it, the petitions were filed by the Eastern shippers and by the Eastern railroads to broaden the issue and include the interterritorial rates.

By Mr. McCollester:

Q. So you now remember that there was a proposal to broaden the inquiry to include the interterritorial rates?

A. I thought you asked me whether we had any proposal like that.

Q. No; I asked you whether there was a proposal.

A. Well, it is stated in my statement——

Commr. Aitchison: He said that in his statement, Mr. McCollester.

The Witness: I said the only proposal that I know of was the one I mentioned in my statement.

Q. When that proposal was made, the Southern shippers withdrew their request for a re-examination of the level within the South, or the rates within the South?

A. No, sir; we did not.

[fol. 5064] Q. Now, Mr. Henderson, on page 19 of your exhibit you have this—which has already been quoted to you on cross examination—statement to the effect that there

is no foundation for any conclusion or statement that these proceedings are the result of politics or that any politics are involved. What proceedings have you reference to there when you use the words "these proceedings"?

A. Well, Docket 28,300 and 28,310, that we are considering here.

Q. Well, are you testifying then simply to the effect that the Interstate Commerce Commission has not instituted these proceedings as the result of politics?

A. Well, I don't think I said that the Interstate Commerce Commission——

Q. I don't either, therefore why do you find it necessary to say that the proceedings are not the result of politics?

A. Because the statement has been made that the Governors' action in this case is dictated by politics, and I say it is not. It was started before the Governors got into the case.

Q. Well, what action was started before the Governors got into the case?

A. To bring about an investigation of the class rates within the South, which would add up to these proceedings we have here now.

Q. How far back do you go for the origin then of Docket [fol. 5065] 28,300? Do you go back of the Southern Governors case?

A. Yes. I say that the demand came from the shippers and came in 1934, long before the Governors got into the case, so that there is no foundation for the statement that the Southern Governors started these proceedings or are in them for political reasons.

Commr. Aitchison: Well, I think we have gone just about far enough with politics in this case, and it is about time to drop it.

Mr. McColester: I am satisfied with that, Mr. Commissioner.

Commr. Aitchison: This case is going to be decided on the basis of the record and according to the Commission's best lights, regardless of political considerations.

Mr. McCollester: We certainly feel confident of that, Mr. Commissioner.

Mr. Norman: Your Governors didn't seem to have.

Mr. McCollester: Well, our point——

Commr. Aitchison: Suppose we drop politics. Now, let us quit on that.

Mr. McCollester: Well, he kept on talking about it.

Mr. Norman: I would like to have politics dropped, Mr. Commissioner, from the newspapers and from the Hill, so far as freight rates are concerned, and leave the subject of freight rates to this Commission to decide on the evidence. That is all we ask.

[fol. 5066] Mr. McCollester: Well, you are going to get it.

Commr. Aitchison: Well, that makes it unanimous.

Mr. McCollester: Right.

The Witness: Mr. Chairman, I would like to say since the remark has been made that my reference to politics was not with respect to this Commission but with respect to the Southern Governors wholly. That was what I had in mind.

Commr. Aitchison: I think that is quite clear.

By Mr. McCollester:

Q. Now, Mr. Henderson, you said that Nashville shippers cannot compete at border points in their own territory with their competitors in Official territory. Do you mean to say that Nashville shippers make no shipments to border points and sell no goods at border points where those goods may also be produced in Official territory?

A. Well, in order to do it they have to shrink the profits or make freight allowances. What I had in mind was that they are not an a basis of equal competition in their own territory.

Q. Well, you don't mean that they don't compete, though, do you?

A. Well, they sell some stuff up there; yes.

Mr. McCollester: That is all.

Mr. Grubb: Since everybody else cross examined Mr. Henderson, I will not ask that he come back for me especially, and I will undertake to ask him the questions that I have.

Commr. Aitchison: Go ahead, Mr. Grubbs.

[fol. 5067] By Mr. Grubbs:

Q. Mr. Henderson, I am not sure that I understand the statement on page 5 of your prepared statement. It is the statement that commences on the seven line. You say: "I am the representative of the Nashville Freight Bureau in the activities of the League."

Then you say: "The same is true of a number of other organizations, such as——"

Just what does that mean?

A. Well, that means that the members of the Atlanta Freight Bureau, or the membership of the Atlanta Freight Bureau covers a large number of individual concerns, manufacturers and shippers, just as the Nashville Freight Bureau does; and, the Atlanta Freight Bureau itself is a member of the League. Mr. Hart is the representative of the Atlanta Freight Bureau.

Q. Do you mean to say that you are a representative of the Atlanta Freight Bureau in the activities of the League?

A. Oh, no.

Q. I see.

A. Certainly not.

Q. Now, you talk about steel truck bodies. Who is it that manufactures steel truck bodies at Nashville?

A. Phillips & Burdorff Manufacturing Company.

Q. That concern is normally a manufacturer of stoves, I believe, is it not?

A. Well, that is their principal peace time activity.

[fol. 5068] Q. Yes. And, this manufacturer of truck bodies is incident to the war effort, isn't it?

A. Yes. Nevertheless, they are entitled to get war contracts, I think, on an equal basis with other people.

Q. How many truck bodies are produced per month by this concern?

A. Well, I don't know. The whole job was a million dollar contract; I don't know how many truck bodies.

Q. Isn't it true that this concern received in the latter part of 1942 an order for 1500 truck bodies to go to Metuchen?

A. They made bids on a delivered price and also supplemented it with a bid f.o.b. Nashville. Now, the railroads refused to do anything about the rates. They got the contract on an f.o.b. price at Nashville. The Government ships the truck chassis into Nashville and they put them on the truck and the trucks are driven away.

Q. Yes. Well, first of all didn't this concern obtain a contract in which the Government obligated itself to pay the freight charges?

A. No, sir. They got it on a basis of price f.o.b. Nashville.

Q. It was not provided that they were to move on Government bill of lading?

A. It was not provided for them to move at all. It was an f.o.b. price Nashville. The bodies were attached to the chassis and the Government is driving the trucks away.

[fol. 5069] Commr. Aitchison: Where were these trucks to be delivered to?

The Witness: Methuchen, New Jersey.

Chrmn. Alldredge: The Government drives them away from Nashville to New Jersey?

The Witness: They ship the chassis there and the bodies are attached and driven away. I presume; I don't know.

By Mr. Grubbs:

Q. They drive them all to Methuchen, or not?

A. That is where they asked for the delivered price of the bodies.

Q. Where do the chassis come from?

A. I don't know.

Q. Do you know whether they are all driven away; the complete truck?

A. So far all of them have been.

Q. Do you know how many of them have been driven away?

A. No; I do not, but all that have been completed have been driven away.

Q. Now, the other illustration you gave was ammunition or shell shipping boxes.

A. Yes, sir.

Q. Who is the manufacturer that you have in mind?

A. Well, the manufacturer who received the invitation to bid was another stove manufacturer, Graham & Dudley, but they didn't bid. They didn't have any rates.

[fol. 5070] Q. There isn't any production at present by Graham & Dudley?

A. I don't think they have received a single contract.

Q. Isn't it true that you have a manufacturer in Nashville that ships a great many shell boxes; a manufacturer by the name of A. O. Loveman?

A. Not of the type referred to here, with metal tops and bottoms. He is shipping one type of box.

Q. He is a large shipper, isn't he?

A. Yes, he ships all kinds of boxes.

Q. Aren't those boxes metal lined?

A. Well, the description reads metal lined or not metal lined. I don't think he ships——

Q. Is he a member of your Bureau?

A. No, he is not. I know he is a manufacturer of different kinds of boxes.

Mr. Grubbs: I believe that is all. Thank you.

Commr. Aitchison: Any further cross examination, Mr. Henderson? Any redirect?

Redirect examination.

By Mr. Norman:

Q. Mr. Henderson, you were asked with reference to the failure to take action after the decision in the Eastern Class Rate case prior to 1934, a period of some two and a half years, I believe it was. Was that not during the depths of the depression?

A. I really don't remember, Mr. Norman. I have been in [fol. 5071] the depression longer than that. I have not gotten out of it. I don't recall, Mr. Norman.

Q. Well, I believe the dates are in the record. I think the Commission can take official notice of the fact that that was the depth of the depression, 1931-1934.

A. You may be right about that.

Commr. Aitchison: Well, I was going to suggest, by reason of Mr. Henderson's long experience, when times are tight and we have a depression on, and the shippers are skating close to the margin of failure, isn't that the time that they look more closely to questions of rate advantage in their behalf or against them?

The Witness: Yes; that is generally true, I think.

Commr. Aitchison: You would expect that they would be most keen along about that time, if that was the depth of the depression?

The Witness: Well, at that time and during that period they didn't have any money to put up to finance a big rate case.

Commr. Aitchison: Well, did they even ask the Commission to reopen, inasmuch as the investigation was one which the Commision had instituted?

The Witness: Well, as I said before, frankly, I don't know why it was not taken up sooner, except one reason was that

we didn't have enough money to finance that investigation [fol. 5072] and we didn't want to start one unless we could go through with it.

Commr. Aitchison: I simply want to know why it was that there was apparently that wide period in there from the time of the decision in 171 I. C. C., until the first of these meetings that you have described.

The Witness: Frankly, I just don't know. I couldn't tell you.

Mr. Norman: May Mr. Henderson be excused?

Commr. Aitchison: Yes. You are excused.

(Witness excused.)

Mr. Norman: I will call Mr. Weaver.

O. H. WEAVER, was sworn as a witness and testified as follows:

Direct examination.

By Mr. Norman:

Q. Please give us your name and address.

A. O. H. Weaver, Griffin, Georgia.

Q. What is your business, Mr. Weaver?

A. I am an industrial traffic manager representing a group of shippers in Georgia and Florida, which is the Georgia Canners Association. The Georgia Canners Association membership consists of all the fruit and vegetable canneries in the State of Georgia.

Q. You have heard the testimony of Mr. Henderson with reference to the support of industry, for the demand here for a revision of class rates, and I will ask you to state what [fol. 5073] is the position of the Georgia Canners Association in that matter?

A. We are very much interested in this proceeding and have so stated our position to the railroads for a great many years.

Q. Have you been making efforts for years to secure a parity of freight rates into Official territory with those obtaining in Official territory?

A. Yes, sir, but I have not been as fortunate as Mr. Henderson. I have never been able to get my proposal on

the docket of the Southern Freight Associatioin. I could not get any further than the general offices of the Southern Railroads.

Mr. Norman: I believe that is all. You may ask him.

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. McCollester.

Q. Why didn't you testify here at the Indianapolis hearing?

A. Because it was our intention to file a formal complaint with this Commission at the close of this investigation attacking our canned goods rates to Official territory, but we learned that certain witnesses testifying in this proceeding made the statement that industry as a whole, in the South, was not in sympathy with this proceeding. We didn't think it would be fair to the Commission or to us not to come here today and tell you that we are not satisfied with our adjustment.

Q. Well, are we to infer from that statement that the reason that you did not testify at the first hearing in this [fol. 5074] proceeding, when the complaining shippers testified, that the rates on which you ship are not rates that are involved in this proceeding?

A. Our commodities move on a column basis, but any change—at least, we believe that any change in your class rate scale will affect those column rates.

Q. But you do not consider, that your rates are involved in this particular proceeding?

A. Yes, I do, because if they are related to the first class rate and you change that scale, it will ultimately affect the column rates.

Q. Then why didn't you come before the Commission when the Southern interests presented their case in chief and testify?

A. Because as I stated before, we fully intended to file a formal complaint on canned goods only.

Q. Why do you propose to file a formal complaint on canned goods rather than await the outcome of this investigation?

A. Well, I said that we would file that at the conclusion of this investigation. If relief is not granted in this proceeding, then we will file a formal complaint.

Q. Well, were you informed, as the reason for a formal complaint, that your rates are not involved in this proceeding?

A. No; I was not informed that my rates were not involved.

Q. What sort of canned goods do you ship, or the members of your association?

[fol. 5075] A. What canned goods are shipped?

A. Yes.

A. Asparagus, green beans, tomatoes, peas, turnip greens, spinach, okra, okra and tomatoes, pork and beans, sweet potatoes, peaches, blueberries, pears, blackberries and pimentoes.

Commr. Aitchicon: It sounds like an OPA order.

By Mr. McCollester:

Q. What territory do you ship to?

A. We ship 75 per cent of our canned fruits and vegetables to Southern territory.

Q. Where do you ship the remaining 25 per cent?

A. We ship to the Far West to Western Trunk Line territory, to the Southwest and Official classification territory.

Q. In other words, you ship all over the country?

A. Yes.

Mr. McCollester: That is all.

Commr. Aitchison: Any further cross-examination? You are excused, Mr. Weaver.

(Witness excused.)

Mr. Norman: Mr. Commissioner, as I stated, Mr. Hart's exhibits have not come, and my other two witnesses won't be here until the morning, so if anybody can use up these 15 minutes, it would be very agreeable to me.

Commr. Aitchison: Was anyone desiring to cross-examine Dr. Duncan and had reserved that privilege? I had forgotten. Was there, Mr. Bell?

[fol. 5076] Mr. Bell: I had understood that Dr. Duncan had been excused.

Mr. Smelker: There was still cross-examination of Mr. Heywood and Mr. Carpi.

Commr. Aitchison: Is anybody else prepared to examine either of those gentlemen?

Mr. Smelker: I have no cross-examination.

Mr. McCollester: I would like to ask Mr. Heywood a couple of questions.

Mr. Norman: I do too, but it is not in the nature of cross-examination.

Mr. McCollester: I don't know whether mine is or not.

Commr. Aitchison: Let Mr. Heywood come forward, if he is here. Mr. McCollester, you want him too?

Mr. McCollester: Yes. I have just a couple of questions.

J. L. Heywood, previously sworn, recalled and testified further as follows:

Cross-examination,

By Mr. McCollester.

Q. Mr. Heywood, would you please refer to your Exhibit No. 215, and particularly page 6 of that exhibit. Are we to understand that you, as an accounting official, approve or disapprove or express no view as to the method used by Dr. Edwards in arriving at his computed costs and his figures which you have cited on your sheet of value?

A. I express no views as to his costs.

[fol. 5077] Q. So that these figures here are not offered by you as your views of the true or the base costs?

A. No, sir.

Q. I am not sure that I understood just what you did in the bottom section of that exhibit, but will you look at the middle section on page 6 of the exhibit? I notice, looking across your last two columns, headed "Southern Region Cost per 100 pounds for 300 miles," and then the next one is "Southern Region Cost,"—is the last one the total and the first one divided by the number of tons? I am looking at the middle section.

A. You are speaking of the last two columns?

A. Yes.

A. That is the rate multiplied by the load.

Q. Now, looking at the bottom section there are two headings that I do not understand. The first heading is "Southern Region Cost per Ton, 300 Miles" and then if you will

skip over to the third column from that, the heading is "Southern Region Average Cost per Ton at Southern Region Composition." I notice that the figure 3.24 appears in both of those columns.

A. Yes, sir.

Q. What is the difference otherwise between those two columns?

A. The column "Southern Region Average Cost per Ton at Southern Region Composition" is the result of applying the average shown under the first column there under "Composition of Tariff, Five Years, 1937 to 1941."

[fol. 5078] Those percentages there of composition are gondola and hopper cars as compared with all other carloads, and apply to the rates in the first column. Likewise, taking the next subject, "Eastern District Including Pocahontas" is also applied to those rates to get the Southern on the basis of the composition of the East, or the South.

Q. Then I will ask you, should we understand that the difference between the left-hand column, which has the figures 2.55, 3.97 and 3.24, and the third column to the right from that, the figures 1.32, 1.92 and 3.24—is the difference between the five-year period and the one-year period; the left-hand being the one-year period?

A. That is true. One is five years. You must give consideration that that is on the composition of the traffic for a five-year period 1937 to 1941, to bring it up to a more current date than Mr. Kennedy left when he put the 10-year period in for 1939. This is exactly the same as Mr. Kennedy's Exhibit 181, only that we have brought it up to the more current five-year period as compared with his ending in 1939 for the 10-year period.

Q. I see. Does this fairly state, based on the five-year period, what your exhibit is designed to show, that because of the difference in the ratio of gondola and hopper cars to all cars in Official territory and in Southern territory, if the Official ratio had been applied to the South, the south-

[fol. 5079] ern cost be lower than that computed by Dr. Edwards?

A. It really is applied here to the southern costs.

Q. And it produces a lower cost than the southern actual ratio of gondolas?

A. I will say this five-year period shows a lower cost for the southern than Mr. Kennedy did for the 10-year period.

Q. But both yours and Mr. Kennedy's show that applying the official ratio of gondolas and hoppers to all types of equipment would lower the southern costs computed on Dr. Edwards' formula, or have I just got that wrong?

A. I don't — as I want to agree exactly with your statement there.

Mr. McCollester: All right. I won't try any more.

Redirect examination.

By Mr. Norman:

Q. Mr. Heywood, as I understand it, you have taken the five-year period ending in 1941 and have included Pocahontas with Official territory; is that right?

A. That is correct, on sheet 6.

Q. On sheet 6.

A. On sheet 7 Pocahontas has been deleted.

Q. And you find, with Pocahontas included for that period, the cost in the South was 98.2 per cent of the cost in Official territory; is that right?

A. That the South cost, yes, is 98.2.

Q. And if you exclude Pocahontas from Official, it would be 91.3?

[fol. 5080] A. That is right.

Q. Now, you said in your testimony you were recasting Mr. Kennedy's testimony. Do you use the same methods of calculation as Mr. Kennedy did? Is that what you mean by that?

A. The same methods were used; yes.

Mr. Norman: That is all.

Recross-examination.

By Mr. McCollester:

Q. Mr. Norman asked you if the result would show the South's cost 98 per cent of Official's costs. You are not offering this explanation——

A. This is simply to show the five-year period, as I said before, current years, with Mr. Kennedy's comparison.

Mr. Norman: And the purpose of that was to show that the South was improving as time went on; is that it?

The Witness: I simply put it here to show you when we get more current data, the story is not the same as Mr. Kennedy showed.

By Mr. Eshelman:

Q. When you say the same method was used as by Mr. Kennedy for consist of traffic, isn't it correct to say there was a use of tons—or, rather, of the consist of traffic as developed in one of Dr. Edwards' exhibits?

A. In his later appendix A. I assume Mr. Norman meant the mathematical method.

Mr. Norman: That is what I did mean.

The Witness: That is what I answered the question on. [fol. 5081] Commr. Aitchison: Any further examination of Mr. Heywood at this time?

Mr. Smelker: I believe the record shows that his exhibits 215 and 216 are not in.

Mr. Eshelman: Then we ask that they be received.

Commr. Aitchison: Exhibit 216 was received, but not 215. The Commission said it was received, and then retracted that when Mr. Grubbs reserved the right to object. Do you object?

Mr. Grubbs: No objection.

Commr. Aitchison: Exhibit 215 will be received.

(Exhibit No. 215, Witness Heywood, received in evidence.)

Commr. Aitchison: If there is nothing further, Mr. Heywood, you are excused.

(Witness excused.)

Commr. Aitchison: Now, there was another witness to be cross examined.

Mr. Eshelman: Mr. Carpi was to be cross examined.

Commr. Aitchison: Cross examination of Mr. Carpi was reserved. Does anyone desire to ask him any question?

If no one desires to cross examine you, Mr. Carpi, you may be excused.

Mr. Smelker: I believe Exhibit 217 was held up.

Commr. Aitchison: Without objection Exhibit 217 is received.

[fol. 5082] (Exhibit No. 217, Witness Carpi, received in evidence.)

Commr. Aitchison: Any thing further this afternoon? If now, we will suspend until 9:30 in the morning.

(Thereupon at 4:30 o'clock p.m. an adjournment was taken until Wednesday, March 31, 1943, at 9:30 o'clock a.m.)

[fol. 5083] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28300

Class Rate Investigation 1939

Docket No. 28310

Consolidated Freight Classification

Main Hearing Room, Interstate Commerce Commission Building, Washington, D. C.

Wednesday, March 31, 1943.

Met, Pursuant to adjournment, at 9:30 o'clock a.m.

Before: Division 2 of the Commission

Hon. Clyde B. Aitchison (Presiding); Hon. J. Haden Alldredge (Chairman of the Commission), Hon. Walter M. Splawn, and a Cooperating Committee of the National Association of Railway and Utilities Commissioners, represented by: Mr. W. H. Scott, of The Public Service Commission of South Carolina; Mr. George McConnaughey, Public Utilities Commission of Ohio; Mr. C. L. Doherty, South Dakota Public Utilities Commission.

Present: Paul O. Carter, Examiner; W. J. Koebel, Ex- [fols. 5084-5084a] aminer; T. L. Haden, Examiner. W. U. Hardie, Director, Bureau of Traffic. J. J. Murphy, Consultant.

Appearances: (As heretofore noted.)

Additional Appearances: Wilbur LaRoe, Jr., Investment Building, Washington, D. C., appearing for Southern Paper Manufacturers Traffic Conference. Thomas E. Grady, 504

Ingraham Building, P. O. Box 2468, Miami, Florida, appearing for Greater Miami Traffic Association.

[fol. 5085] Proceedings

Commr. Aitchison: You may proceed.

Mr. LaRoe: If Your Honor please, it has been agreed that I may make a one-minute statement on behalf of Southern Paper Manufacturers Conference, with your approval:

Statement by Mr. Wilbur LaRoe, Jr.

At pages 3856 and 3857 of the record Mr. Oliver, I am sure quite unwittingly, testified that the Southern Paper Industry voluntarily agreed to 110 per cent basis to the North. In the record in that case, which was I. & S. 4413, the principal witness for the paper industry, Mr. C. E. Jones, said, "We also sought this same mile for mile parity to points beyond in Official territory but were unable to obtain the same by voluntary agreement."

It was clear throughout that proceeding that the carriers on paper maintained the 100 per cent level of rates to the Ohio River crossings, and our witnesses therein contended in view of that fact that there would be no justification for a higher basis to the points north.

Thank you very much.

Commr. Aitchison: Whom do we hear next?

Mr. Hollopeter: If the Commissioner please, I have a witness on behalf of Governor Shricker, who is ready to go on this morning.

Commr. Aitchison: We will be glad to hear him.

[fol. 5086] George N. Beamer, was sworn as a witness and testified as follows:

Direct examination:

By Mr. Hollopeter:

Q. Will you state your name for the reporter?

A. George N. Beamer.

Q. Where do you reside?

A. At South Bend, Indiana, and temporarily at Indianapolis.

Q. Do you appear here on behalf of Governor Schricker of Indiana?

A. I do.

Q. Are you connected with the State Government of Indiana at this time?

A. I am.

Q. In what capacity?

A. I am at present Chairman of the Public Service Commission of Indiana.

Q. Have you had previous connection with the State Government?

A. Yes. For two years immediately preceding I was Attorney General of Indiana.

Q. Are you familiar with the Governor's statement which you are going to present, to the extent that you could adopt that for your own testimony in this case?

A. Yes, I am.

Q. Will you proceed then to present the statement for the [fol. 5087] Governor, please?

A. This is the statement of Governor Henry F. Schricker of Indiana.

Mr. Norman: Mr. Commissioner, I do not object really to the statement but I think it ought to be the statement of the witness.

The Witness: I am perfectly willing to adopt it as my statement.

Mr. Hollopeter: He justified to that, Mr. Norman.

Mr. Norman: Then he proceeds to say it is the statement of Governor Schricker.

The Witness: It will not be my purpose here to discuss the technical and involved question of freight rates. I shall leave that to the experts who are able to weigh and evaluate all pertinent factors. I want to say, however, that I appreciate this opportunity to submit to this honorable body this statement on behalf of the great State of Indiana. Since the Governors of some of our sister States have appeared in this proceeding to submit statements on certain economic questions as affecting their respective States, I feel that some statement from our section of the country should be helpful.

I shall present here what may be termed Indiana's side of a complex, economic and transportation problem. I assume that the Governor of any State has so many weighty

problems of government pressing for his time that it is [fol. 5088] impossible for him to arrive at any unbiased or judicial determination of all the varied and involved technical angles of freight rates as they are involved here. I have found that to be true in my case and I freely concede the propriety of having a technically trained body of experts such as the Interstate Commerce Commission to carefully consider and evaluate all the facts which all of us may present on all sides and features of this problem.

First, I should desire most emphatically to state that the people of Indiana desire in this controversy only complete fairness and justice based on all the facts and conditions that are involved or have a proper bearing on this freight rate problem. Desiring that for ourselves we just as ardently desire to see exactly the same fairness and justice given to the people of each and every other State and section of the country.

I believe there is a common ground for the establishment of such fairness and justice in this problem and again recognizing the complexity of it, I think that we should all rely explicity on the fairness and integrity of the Interstate Commerce Commission and the orderly process through which we have always obtained justice in this country rather than attempt to stir up passions and prejudices in the various sections of the country on a question that is so technical and involved that it is impossible for the laymen to grasp the significance of the various parts thereof and consequently unable to reach a fair conclusion.

[fol. 5089] From the statements I have observed from various representatives of other sections on this question, I am thoroughly convinced there are two sides to this freight rate problem which should be plainly evident to anyone who is in a position to view the matter with a completely open mind.

Indiana and her surrounding States have their economic problems. Knowing them intimately it is not surprising to me that they are very similar in many respects to most of the problems discussed by the representatives of other States. We recognize the definite effect which freight rates can have on the prosperity and well-being of any State or section of the country. We have in Indiana, as I am sure prevails in almost every other State also, a very grave and serious readjustment problem in our economics when this

war is over which we all earnestly hope and pray will be soon.

This, however, only emphasizes the fact that all pertinent evidence on all sides of this problem should be clearly presented to the Commission and then let the Commission be free to reach its just and proper decisions, unhampered by sectional prejudices and passion as they have sometimes been displayed in the press and through other channels.

While as I have previous stated, I have no personal or technical knowledge of freight rates, my information is that there are many instances where the freight rate of a given article for a given distance in Indiana or the surrounding [fol. 5090] States is higher than the corresponding rate in various other sections of the country.

Mr. Norman: I woud like to ask right there if the witness adopts that statement as his own.

Mr. Hollopeter: He says it is his information.

The Witness: Yes, I adopt that.

Mr. Norman: But you have no technical information as to rate matters.

The Witness: No, not personal.

Mr. Norman: All right.

The Witness: I understand further that there are other situations where the reverse of this is true. That is also my information.

I am not in a position to develop or discuss the propriety or impropriety of any of these specific illustrations but from a purely academic standpoint it seems that it must follow, that in any fair and proper pricing of transportation service it ought to be done in a way that would best serve the needs of commerce and industry in the various sections of the country and at the same time to properly maintain sound and healthy transportation facilities.

As the needs of these objectives differ greatly in the different sections of the country it would seem that it would not necessarily follow that any serious fault must lie in the rates structure, merely because of these different [fol. 5091] levels of freight rates. The fault can exist only, it seems, if or when it should be found that these offsetting advantages and disadvantages are not equally or properly balanced. That, of course, again gets back to the judicial question which the Commission alone should determine in light of all the facts.

I would like, therefore, to submit to this honorable body several facts of economic importance that exist with respect to conditions in Indiana.

But a relatively few years ago my State of Indiana was the home of a number of thriving and prosperous manufacturers of pulpboard made from straw, a prevalent raw material in Indiana. This industry provided much employment and produced much of value in the normal commerce at that time. Today practically all of these plants have disappeared from the State. We have only ruins in many places to mark the location of the operations. They disappeared because of the development of the production of board, probably of a better quality, and certainly more economical, from woodpulp produced largely in the South and Southwest.

The disappearance of these operations not only disturbed the labor situation but in many respects affected definitely the revenues of the State through the loss of taxes formerly received from the valuation of the properties. It is not my purpose to indicate that Indiana has any complaint on this situation for we look upon it as one of the natural developments in the country as a whole which become of importance [fol. 5092] to all of us.

It does seem to one uninformed in the technicalities of freight rates that it indicates that not all that has been said elsewhere about the freight rate situation can possibly be true for it certainly did not protect Indiana in the enjoyment of this industry and while it was disappearing in Indiana it was developing to a greatly magnified degree in the South and Southwest.

Another great and important industry in Indiana has been the production, processing and marketing of a building limestone of which the State has an almost unlimited supply and a quality that we are proud to say does not seem to be surpassed anywhere else in the country. That industry has been almost dormant in Indiana in recent years.

My information is that producers of limestone in States to the south of us have often been able to ship their product, directly past Indiana sometimes even into Canada, where I have been informed they have undersold our Indiana producers. This again is not a complaint on the part of Indiana nor a suggestion that the rates are out of line or unfair to us. I am simply reciting this to show the eco-

nomic situation and it appears to me here that the rates, whatever they may be, are not so favorable to Indiana and so unfavorable to other sections as to protect Indiana unduly in this instance.

[fol. 5093] We also had, in years past, many thriving and prosperous manufacturers of furniture in Indiana. That industry has very definitely been on a decline in the past 15 years and with its decline in Indiana, we observe much expansion in the same industry in the South and Southwest. I do not contend that freight rates alone are the cause of this and again this is not a complaint against the rate situation. I am simply stating the economic fact that the furniture industry in Indiana has not been prosperous and is getting less and less prosperous each year.

I have been informed that whereas we formerly produced much furniture in Indiana, that now most of the furniture sold in Indiana in retail is produced in the South and Southwest. It is reported to me that these manufacturers in these territories normally undersell Indiana manufacturere very frequently in their home markets as well as elsewhere in the country. At least the freight rates have not prevented this desirable improvement in the Southern industry nor has it prevented the very undesirable recession of the same industry in Indiana.

I would call attention to one more industry which formerly thrived and was very prosperous in Indiana, that is the manufacture of heating and cooking stoves.

Without going into the details the story of the Indiana stove industry is precisely the same as that of the furniture, stone and the strawboard industries. The operations [fol. 5094] of these four substantial lines of industry which seem to have been generally lost to Indiana has brought upon us serious implications in the way of disturbance to labor and financial loss.

I do not appear here in the position of blaming any other territory or States who have been more fortunate than we in benefiting by the development of these industries coincidentally with their decline in Indiana. I look upon this as one of our economic problems which we must solve and I have generally found that we can solve our problems more satisfactorily by attacking them directly than by heaping blame and censure on others. I do want to leave with the Commission the facts that Indiana and its surrounding States have not been wholly prosperous nor as successful

with their industrial activities as we should have liked to have been.

Because of the serious post-war readjustment that is sure to come, if the Commission shall find readjustments in these rates to be proper as a result of this proceeding we urge that they as carefully weigh the effect of such readjusted rates on our economics, as they should weigh the effect of the present rates on the economics of those sections complaining thereof.

May I again reiterate that being one of the forty-eight States of this great nation, we desire no unfair treatment in freight rates or otherwise imposed upon any of our sister States and likewise we ask no advantage whatever over any of them, but we do insist that complete justice be given to [fol. 5095] all with respect to the entire freight rate structure which so definitely affects the economy of every State.

Our experts in transportation matters, I am sure, will give you the details that should enable you to treat all fairly and equitably and we rely upon the continued integrity of this Commission in determining these issues without fear or favor and upon the facts properly submitted without regard to any other influences.

Q. Have you personally had occasion to confer, together with Governor Schricker, with responsible representatives of the stone, the stove and the furniture industry in Indiana?

A. I have.

Q. And is that the basis for the statement you have made with regard to those industries?

A. That is correct.

Mr. Hollopeter: I believe that is all we have, sir.

Mr. Norman: Just a question or two.

Cross-examination.

By Mr. Norman:

Q. Mr. Beamer, on page 3 of the absentee Governor's statement with reference to furniture it is stated, "I do not contend that freight rates alone are the cause of this."

Do you contend that freight rates are even a contributing cause?

A. I don't recall exactly how that statement was used, [fol. 5096] I mean in reference to the other. You mean because of the dislocation from the North and the increase in the South?

Q. That is right. I take it that is what he is talking about.

A. I don't know that that is a contributing factor.

I do know, of course, that the southern manufacturers are able to undersell the northern manufacturers right in our local community.

For instance, in Indianapolis a manufacturer informs me that southern manufacturers can undersell him on the same furniture right in Indianapolis where he is located.

Q. Inasmuch as he pays no freight rate at all the freight rates can't be a contributing factor, could they?

A. I would think not, not in that particular instance.

Q. Do you claim that there has been any unfairness to Indiana in the freight rate structure as it exists?

A. No, there is no contention that there has been.

Q. And you don't contend that the decline of any one of these four industries you have referred to has been due to any unfair adjustment on freight rates?

A. No, I simply make the point the industry has declined in Indiana, even though other sections of the country claim we have advantages in freight rates.

The freight rate advantage which we may have, if any, has not kept these industries from seeking their natural advantages.

Q. In other words the tariff is not high enough?

[fol. 5097] A. No, we don't contend that.

Mr. Norman: That is all.

Commr. Aitchison: The rates on stoves and on stone have both been pretty thoroughly investigated by this Commission, you may recall, don't you?

The Witness: I don't know about that personally, no.

The only points we were attempting to make were that if there is any advantage in the stone, so far as Indiana is concerned, they can still undersell us in markets further to the north.

Chrmn. Alldredge: Well, I don't want to pursue the inquiry, but it is a fact, isn't it, that Indiana produces the stone that also ships into the South?

The Witness: I don't know. I presume on occasion they do. We think we have a better quality than anybody else.

Mr. Norman: You have almost a monopoly in the Washington market, haven't you?

The Witness: I don't know. We have had some pretty good representation down here. We have been pretty good salesmen upon occasion, but I don't know that it has been true in recent years.

Commr. Aitchison: I think we ought to have an understanding that Mr. Hollopeter probably recalls we did deal with this Bedford stone case at very great length. I remember the agony we had in conference over it.

[fol. 5098] The Witness: I think we should make it clear we are not complaining about the situation.

Commr. Aitchison: I am simply trying to show those rates have been pretty well fixed, and of course stoves were in the Southern Governors' Case.

Mr. Hollopeter: We agree with you that they have been fixed. I don't know that we can go all the way, but the purpose of the Governor's statement here was simply to show, as the witness has stated, that whatever the rate adjustment has been it has not been responsible or has not protected Indiana unduly in the maintenance of these industries, and he doesn't attempt to make any complaint, and that doesn't mean, I think, that he admits the rates are entirely proper. I don't want that to appear that way.

Commr. Aitchison: And I take it also there isn't much question but what the stone and stoves at least move on commodity rates, rather than on class rates.

Mr. Hollopeter: Yes, I think the Governor didn't attempt to go into that. He simply conferred with the industry.

Commr. Aitchison: I am wondering as to whether the stone and stoves move on——

Mr. Hollopeter (interposing): The stone moves on commodity rates and the stoves I believe are on a percentage class which are perhaps considered commodity.

Commr. Aitchison: And how about furniture in Official [fol. 5099] territory?

Mr. Hollopeter: Furniture is largely commodity—no, it is a class, I should say.

Commr. Aitchison: And from the South?

Mr. Hollopeter: That is on a class basis but it has been fixed by the Commission some years ago.

Commr. Aitchison: In both territories?

Mr. Hollopeter: Yes, in the general furniture case, perhaps 10 or 15 years ago.

That is all we have for Indiana, your Honor.

Commr. Aitchison: You may be excused.

(Witness excused.)

Commr. Aitchison: Mr. Norman, are you ready to go ahead?

Mr. Norman: Mr. Hillyer has a witness from Florida he would like to put on now.

Commr. Aitchison: Proceed, Mr. Hillyer.

T. C. Maurer, previously sworn, recalled and testified further as follows:

Direct examination.

By Mr. Hillyer:

Q. Mr. Maurer, in the testimony of Mr. Wolford for the Seaboard Air Line Railway, he points, with perhaps pardonable pride, to the fact that some 67 new industries have been located in the Southeast on the Seaboard Air Line Railway during the years 1939 to 1941.

I want to inquire as to these products, whether they move [fol. 5100] on class or commodity rates generally, and generally in what territories:

The products of sawmills, what rates do the products of sawmills take?

A. They take commodity rates as a general rule, and move in Southern territory.

Q. Planing mills?

A. Commodity rates.

Q. Building supplies?

A. They, for the most part, are commodity rates.

Q. Do building supplies ordinarily move from the Jacksonville area into the northern States?

A. No, sir; that is a local proposition.

Q. What type of rates are charged on products of crate mills?

A. Commodity rate.

Commr. Scott: What kind of mills?

Mr. Hillyer: Crate mills—c-r-a-t-e.

Q. Do crate materials take the lumber rates?

A. Yes, sir, they do.

Q. Is that true also of barrel staves?

A. Yes, sir.

Q. Where are the products of the crate mills in the Southeast distributed?

A. Generally speaking, in the local territory for the fruit and vegetable industry.

[fol. 5101] Q. Next Mr. Wolford mentions sulphite pulp. What basis of rate is used for sulphite pulp?

A. Sulphite pulp is manufactured at one pulp mill point in Southern territory Sulphate pulp is manufactured pretty generally at all the paper manufacturing points.

That commodity moves generally into Official territory. However, on wood pulp today there are only one or two through rates. The balance of the rates are based on either Ohio River transportation in traffic moving into Central territory, or Virginia cities combination on traffic moving into Eastern territory.

In other words we have been attempting to obtain a through basis of rates on wood pulp comparable to the level of rates in effect in Official territory for some years, but have been unsuccessful up to this time, although I must say that there is a proposal now before the Official lines seeking to publish a through line of rates.

Q. Where is the sulphite pulp mill located?

A. At Fernandina, Florida.

Q. Isn't there one in Jacksonville?

A. Yes, sir.

Q. Are you the regularly employed traffic manager for that mill?

A. I am, yes, sir.

Q. Is sulphate pulp a finished product sold for consump-
[fol. 5102] tion or is it a product used for further assembly or manufacture?

A. It is a raw material and of course has no use in its state as pulp. It is converted into paper either by direct use of the pulp or mixing it with other materials such as scrap paper and scrap board and things of that nature.

Q. What basis of rates is applied to sulphate of alumina?

A. Sulphate of alumina is another commodity that moves locally within Official territory. Another name for it com-

monly is papermakers' alum and is used quite extensively in the paper industry.

It moves on exceptions to class rates, and the movement within the South, that is the movement is more or less confined to points within the South, and does not move from the South to Official territory as a general proposition, although there may be some sporadic movements.

It is also used in the purification of water and moves locally from such points as East Point, Georgia to Carolina cities for use in their water supply.

Q. From your knowledge of these industries in your section will you say that these are war industries or are permanently or established industries?

A. I would say they are all stable and permanent industries. They are not war industries.

Q. Do any of the products of these 67 new industries that you know of move generally at class rates from the South into the North?

[fol. 5103] A. No, sir, I can't see any that do.

Q. For a number of years were you employed by the Florida East Coast Railway?

A. Yes, sir, I was.

Q. In the Traffic Department?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Parsons yesterday?

A. I did, yes, sir.

Q. You are familiar with the fact that the Florida East Coast has to meet the competition of direct coastwise steamship lines, intercoastal waterways, trucks and the Seaboard Air Line Railway?

A. That is correct, yes, sir.

Q. What is the basis of the first class and other class rates between Jacksonville and Miami, the main termini of the Florida East Coast?

Commr. Aitchison: Intrastate, you mean?

Mr. Hillyer: Yes, intra or inter.

A. Intrastate the rates are very much lower than the K-2 scale. Interstate they would be on the basis of the K-2 plus L-4, 13494 scales.

By Mr. Hillyer:

Q. The interstate would only apply in the nature of proportional rates on business coming from beyond?

A. Yes, sir, that is correct.

[fol. 5104] Q. In your opinion would it be practicable for the Florida East Coast Railway to maintain the Florida arbitraries in addition to the K-2 scale on its traffic between Jacksonville and Miami?

A. As to competitive points I would say it would be impossible, impracticable to do that, and especially to do so at non-competitive points, but there again you have the competition with water and truck lines that would, I believe, make it impossible to maintain anything approaching the level of the K-2, L-2 scale.

Q. Do the truck lines of Florida maintain class rates including the L-2 arbitraries on interstate or intrastate movement?

A. No, sir.

Mr. Hillyer: That is all on direct.

Commr. Aitchison: Cross examine.

Cross-examination.

By Mr. Norman:

Q. Prior to the discontinuance of operation by the coastwise lines did wood pulp move in very considerable volume by water from the South to the North?

A. Just to the North Atlantic ports.

The large movement from the South to the North by water would be wood pulp board; that is a step further along in board manufacture than wood pulp.

Probably the largest movements from the South (and when I say the South I speak of the southern paper manu-[fol. 5105] facturing points), probably the largest movement would be to such points as Chicago, Chillicothe, Canton, and points like that, where the wood pulp is prepared for some type of paper or board.

Q. Have you undertaken in your statement to deal with all of the 67 industries which Mr. Wolford enumerated?

A. No, sir, and I merely commented on those that Mr. Hillyer talked about.

Mr. Norman: That is all.
Mr. Hillyer: That is all.
Commr. Aitchison: You are excused.

(Witness excused.)

[fol. 5106] Mr. Norman: If the Division please, Mr. Walter McDonald has a statement he wishes to make on behalf of Southern Public Service Commissions.

Commr. Aitchison: We will be glad to hear him. Is this a statement in the nature of testimony?

Mr. Norman: Yes, it is in the nature of testimony.

Commr. Aitchison: Have you been sworn, Mr. McDonald?

Mr. McDonald: I have not, sir.

Walter R. McDonald, was sworn as a witness and testified as follows:

Direct examination.

The Witness: Mr. Chairman, my name is Walter R. McDonald. I have been a member of the Georgia Public Service Commission since January 1, 1923, with the exception of two years that I was prevented from serving by reason of an Executive Order, and was reelected again during that time I was out. I have been Chairman of the Commission since August, 1937.

My official residence is in Atlanta, of course, and by reason of that pivotal location my fellow Commissioners in the South have kept me in the position of President of the Southeastern Association of Railroads and Utilities Commissioners, a voluntary organization of State Commissions made up for the purpose of joint and cooperative action in rate matters of common interest to all the members of the associations, and it is made up of the Commissions of the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North [fol. 5107] Carolina, South Carolina, Tennessee, Kentucky and Virginia.

I am here today speaking for all those State Commissions except the last two.

Commr. Aitchison: Which were they?

The Witness: Virginia and Kentucky, the interest in those two States being divided in this case.

We have interested ourselves in this proceeding by reason of the statutory injunction in all of our States that requires the State Commissions to both file and prosecute complaints before the Federal Commissions in the matters of rates deemed to be discriminatory; that is, interstate rates deemed to be discriminatory to our people.

We also are here responsive to the shipping demand, the demands of shippers of our section who are dissatisfied with their freight rate adjustment as we have it.

Our people have never been quite satisfied with the class rate adjustment in Docket 13,494.

I went on the Georgia Commission just at the close of that case, just before the tentative order came out, and was on the Commission when it was finally adopted and put in intrastate in my own State.

Commr. Aitchison: Are you going to throw any light on the question I was asking yesterday, why when the Eastern Class Rate case was decided there was no action?

[fol. 5108] The Witness: I think so. I recall, with some chagrin, it was even in intrastate that our State carriers in publishing the rates intrastate labeled them—published with a big red flag—"published by order of the Georgia Public Service Commission."

I recall also my fellow worker, Hugh White, of the Alabama Commission came over to Atlanta as far back as 1927 and addressed a large dinner meeting, and his talk was on the inter-territorial freight rate barriers, and it would have been quite an argument in this very proceeding here today.

The question you raised as to why the South had not moved, following the suggestion made in 1926 by Mr. Eastman, would be probably manifold, but the main reason would be, we have been on the defensive all of the time.

Your Class Rate case was—the Eastern Class Rate case, if I remember right, was decided in the early part of 1930.

Then in 1931 we were confronted with the Ex Parte 103 proceeding.

I have asked several around the room here this morning: it is my recollection it was in 1931 that proceeding was commenced, and we had that to deal with then for several years during the depression, and then when our Class Rate case was finally brought in 1935 it was appealed for the very reason Ex Parte 115 had gone on the same question: Mr. Wilbur LaRoe had been employed to prosecute that case, and I understood—I was not a party to it at the time—

[fol. 5109] but I understood it was very largely on his advice, under the contention of the carriers, they shouldn't proceed with it.

Commr. Aitchison: The Eastern Class Rate case decision was January 15, 1931.

The Witness: That was 1931. I was thinking it was 1930.

The Ex Parte 103 commenced in 1931 also, I believe in the fall of 1931.

That has been the main reason, because we have been resisting increases, and another main reason is that the Southern Commissions are not very heavily staffed. We haven't had the money or the facilities to organize the investigation, and then another reason would probably be, in my opinion, that the trucks afforded a measure of relief along through that period.

Now that the rates are stabilized and we have gotten them filed on exactly the level with the rail carriers, they ceased to be of much benefit in that respect.

But certainly there has been and is general dissatisfaction in the South with the present rate adjustment.

Mr. Widell's statement at Columbus that he was of the South and spoke for the South reminds me of the old Scotch lady that saw the troops marching along and her son Jim was among them, and she said, "Look, Jim is the only man in the company that is in step," and he does not speak for any organization except his Southeast-Southwest—I don't know who they are exactly, except some commodity shippers [fol. 5110] —but he left the impression he was speaking for the Southern States Industrial Council.

In spite of the fact that we have known that there is considerable railroad influence in that Council it has not gone on record as being opposed to this proceeding.

I received word in the early part of 1941, in March, 1941, that they would have a meeting in Atlanta of their board of directors; that they would consider this matter, and I knew that Mr. Widell was seeking to get a resolution condemning our action in pressing this proceeding.

I wrote to all the members of the board and asked them for an opportunity—I explained in that letter our position and asked for an opportunity to appear before them and make our position more clear to them, and they afforded that opportunity.

I was compelled to come to Washington and couldn't go before them, but Mr. J. O. Henry, our rate expert for the

Tennessee Commission, and Mr. Bachman, of Atlanta, did appear.

I received a letter following that meeting from Tyre Taylor enclosing a resolution in which he stated the Council had decided to remain neutral.

The entire resolution was adopted April 10th and said, "Transportation being vital to all industry and commerce is properly subject to Federal Government regulation; but that regulation should be sensible; should not invade the field of management and should apply alike to all forms of public carriers. The Council advises regulation of all forms [fol. 5111] of transportation by the Interstate Commerce Commission. It also proposes to continue its interest in rate matters affecting its constituency, keeping in mind the interest of shippers, consumers, and transportation agencies alike. The Council recognizes, however, that each industry is the best judge of where its interests lie in this case, and that representing southern industry as a whole the Council cannot properly champion the cause of any member group to the prejudice of any other group. Accordingly where there is a substantial conflict of interests within the Council it will remain neutral."

Mr. Widell wasn't satisfied with his efforts there so he organized a forum under the guidance of Mr. J. U. Barr of New Orleans, that held a meeting over in Birmingham, Alabama, on the 10th day of December, 1941. This resolution was adopted April 10, 1941, and they invited several people to come and take part in that forum.

I accepted the invitation and went over and appeared on the program with Mr. J. E. Tilford of the L. & N. and Mr. Vogtle, both of those gentlemen of the L. & N., and at the conclusion of that meeting, which had been certainly called and planned for the purpose of adopting resolutions, adjourned without doing anything except reporting its proceedings, so I say there is no organized interest in the South that is opposed to it.

[fol. 5112] As Mr. Henderson has outlined, the State Commissions have worked with the shipper bureaus, members of the Southern Traffic League, and others.

Briefly, I would like to say in answer to Mr. Oliver's Chamber of Commerce speech before the Commission that he depicted a South that we couldn't recognize. I told him after his testimony that he reminded me of the old lady that had gone to the funeral and they had a new parson

in town, and in the midst of the obituary she punched the boy and said, "Go up and look and see if we ain't at the wrong funeral," because I wouldn't recognize the South that Mr. Oliver painted to you.

The statement that railroads made adjustments as soon as they found out anything was needed, that they would make it just specifically—we had a livestock adjustment which you gentlemen have corrected. That was the result of an investigation that was forced on my State under a Thirteenth Section case, and it was a rate adjustment that had been put in between the railroads and the packers and wasn't designed to help the South. It was the highest rate scale in the whole nation, and when we organized under this same association I speak for here today to attack those rates the first thing we did was to contact the carriers and asked them to name the place that suited their convenience to talk to them about it, and they named Washington, so we all came to Washington and they listened to us and said nothing; said they would report to us, and we [fol. 5113] had a hard time getting an answer, and individually they would send somebody to our State Commissions to tell us we were wrong about it and that we shouldn't do anything about it, and nothing was done, and we were compelled to fight the thing all through.

We had a wine industry that started on a large scale in Georgia. One of them has hung on because he had a pretty good local business, but one was compelled to leave because we couldn't get any adjustment on those wine rates, and we do not have the policy he depicted here of getting any adjustment with carriers.

There was one other statement he made that I feel in justice I should answer, and I would like to say this too, that while I agree with everything that Mr. Henderson has said, I think the Governors would not agree with his stand that they did not commence until 1937, the 11th day of May, 1937.

As a matter of fact, the minutes of that organization show they had started back just about as early as the Southern Traffic League in 1934 trying to do something about bringing about an adjustment.

Chrmn. Alldredge: When was it they began?

The Witness: The first meeting was in 1934. The occasion was a dinner down in what we call in Georgia the "The

Little White House," and following that meeting in 1935 they met again in Montgomery, Alabama, but it is correct that in 1937 was when they took action definitely and [fol. 5114] organized and commenced to get the means of prosecuting the cases, and at that meeting there was a division of thought as to whether or not we should attack the commodity rates or the class rates, and growing out of that division the Governor of my own State—it seems I have a habit of developing this sort of thing—wanted to start forthwith and do the job, and he organized him a separate group to just correct it forthwith, and by main strength and awkwardness, but the other groups divided as to the class rate and the commodity rates.

Governor Graves of Alabama was the dominant figure in the whole conference, and much more active, so he pressed forward with the commodity case.

Mr. Oliver ridiculed the idea that they started out with a lot of complainants—and he pointed that out as a reason why the people in the South were not objecting—and then ended up with 14 or 15 commodities.

That complaint was filed, as I say, without consultation with any industry, and Governor Graves just sailed in and got him up a complaint and filed it and then went back to see who was going along with him, and those who were willing to provide finances and to furnish testimony stayed in the case and otherwise they were stricken.

Then, too, this is also correct, under the decisions and rulings herein before the Commission, if they were not shipping without the territory, namely, not discriminated [fol. 5115] against, they had no case in a Third Section case, so they couldn't proceed, and we had a good many that were in that predicament.

As I explained, the Class Rate case, which was later appealed because of the fact that the other case preceded, and the advice of counsel that it was not timely to present the Class Rate case when the carriers were compelled to be asking for additional revenues.

We are here, as I say, again responsive to the shippers of our section before this, the proper forum, and asking that the uniform system of rates be published for all the section that is involved in this entire proceeding.

Thank you, sir.

Commr. Aitchison: Are you convinced that the application of either the Official Classification or the Western

Classification in the South would meet the needs of consumers?

The Witness: Well, only by this, Mr. Chairman, that it has worked in the North and if fits commerce in the North it would fit it in the South.

Commr. Aitchison: The Official?

The Witness: Yes, the Official, and if it succeeded and worked in Official Territory there is no sound reason why it wouldn't in the South. I am convinced that it would.

Commr. Aitchison: What about the Western Classification?

The Witness: Well, I don't think that it has proven to be as successful as the Official Classification, so I still [fol. 5116] — we would fare better under Official Classification.

They have had many exceptions out there, as we have. We have gotten to where everything out there moves under exceptions.

I would like to say this, in further answer to the question as to why the South didn't do something about this, I would like to call attention to the fact that both North Carolina and Georgia undertook to correct the question intrastate but didn't get by with it by reason of the resistance of the carriers.

Commr. Aitchison: Is that all, Mr. Norman?

Mr. Norman: Beg pardon?

Commr. Aitchison: Is that all?

Mr. Norman: Oh, I have some witnesses.

Commr. Aitchison: I thought you were calling witnesses. Is that all you have?

The Witness: That is all.

Commr. Aitchison: Cross examine.

Cross-examination.

By Mr. Gwathmey:

Q. Mr. McDonald, I have one or two questions.

Does livestock move within the South or between the South and other territories on class rates?

A. I told about the livestock case, Mr. Gwathmey, to illustrate that the carriers did not, as Mr. Oliver had said, [fol. 5117] correct every complaint that was indicated to them. You evidently didn't follow my statement.

Q. I don't think you have answered my question either.

A. It does not in the South.

Q. Is your Commission advocating uniformity as between the North and the South, not on only class rate traffic but on other traffic.

A. Absolutely.

Q. Does that include not only manufactured articles, but raw articles?

A. It does.

Q. Does that include both state and interstate traffic?

A. It does. We have demonstrated in the Georgia Commission I think quite a spirit of going along with the interstate adjustments, a great many times when we haven't liked it.

Q. You recall, I suppose——

A. (Interposing:) I am just bragging on that.

Q. (Continuing:) —that there is a case pending before the Commission right now involving road aggregate rates.

A. That particular case has been to this Commission several times and to the Supreme Court of the United States.

Q. Under a 13th Section proceeding.

A. That is right. That is a rather local situation down there between the industrial interests of Alabama and Georgia that brings that about more than anything else. [fol. 5118] Q. As a matter of fact, the railroads in Georgia have been, you might say, fussing with the Georgia Commission about that matter for about twenty years, haven't they, the 13th Section proceedings, off and on?

A. I think the southern railroads have.

Q. The Southern Railway?

A. The Georgia carriers have gone with us but it has been the Southern Railway that has pressed it.

Q. Just one more question, Mr. Chairman.

You have discussed at some length what positions have been taken or have not been taken at conferences held between the railroads and the various shipper organizations.

Does the Georgia Public Service Commission make it a practice to participate in conferences between the railroads and the shippers looking to the establishment of freight rates?

A. Do we make it a practice?

Q. Yes, sir.

A. We have conferred with the shippers and the carriers, yes.

Q. I spoke of joint conferences between shippers and railroads.

A. Yes.

Mr. Gwathmey: Thank you.

The Witness: We have, ever since I have been on the Commission; it has been quite a practice. We confer with rail representatives very, very frequently, more even than we do with the shippers, and we very often bring together [fol. 5119] the shippers and the carriers.

In the last few years we have been trying very hard to work out something on watermelon rates. We have had a good many meetings of the shippers and carriers in that case.

Cross-examination.

By Mr. Grubbs:

Q. I believe you were at the Indianapolis hearing.

A. Yes, I was.

Q. And you listened to the testimony of Governors Cooper and Holland at that time?

A. I did.

Q. You recall, I take it, what Governor Holland said on several occasions to the effect that the Southern governors did not want to hurt the railroads in this proceeding and wanted them to have rates that would yield to them a fair profit. Do you take any different view?

A. Absolutely not. We are just as interested in the railroads and their success as you are, and we feel very definitely in this proceeding that this being the main factor that has prevented the economic development of the South that you will reap the same benef.. that the whole South will.

If we had the per capita income in the South of the Official Territory's per capita income, the South alone would produce a market one-half again as large as the foreign trade of 1938, and you would benefit right along with us.

[fol. 5120] Mr. Grubbs: Thank you.

Cross-examination.

By Mr. Clark:

Q. You live in Atlanta.

A. That is my official residence. My legal residence is in Augusta, your home town.

Q. That is right. You are familiar with Atlanta?

A. Very, very familiar.

Q. You agree with me that it is the outstanding city in the South?

A. It is.

Q. The Southern Railway has more lines in there than any other railroad?

A. Absolutely, and we are very proud of it.

Q. We haven't hurt Atlanta.

A. Not at all. We are very proud of the Southern Railway.

Mr. Clark: That is all.

Cross-examination.

By Mr. McCollester:

Q. Mr. McDonald, do the Southern State Commissions advocate that parity should be brought about by establishing the Southern basis of class rates within Official Territory?

A. We haven't proposed that in this proceeding.

Q. Would you favor it?

A. Well, we haven't proposed that, and I don't know that it is my province here to suggest how we should solve [fol. 5121] the problem. We have proposed that we have your level.

Q. In other words, you are proposing how you should solve the problem by proposing the Official level in the South.

A. That has been suggested, yes.

Q. Have you given any consideration to whether the Commission here should not, if it is to achieve parity, do so by increasing the Official level to the Southern classification.

A. We would think so. We have always contended that the costs in the South are no higher than they are in the North, and we feel that fact is well-established, and we

can see no reason for that sort of reasoning. I said that the costs in the South——

Mr. McCollester: We know what you mean.

By Mr. McCollester:

Q. In other words, you don't think that the Official Territory class rates are too low?

A. No, we do not.

Q. Do you think that the Official Territory raw material rates are too high?

A. Well, we are not seeking to hold any advantage, if we have any, on the commodity rates.

We feel like the entire structure should be equalized. We are not asking for any advantage.

Q. Do you think there would be any opposition in the South to establishing rates on the pig iron from the Birmingham district to Atlanta on the basis that prevails on the movement of pig iron from the Buffalo furnaces to Albany, New York?

[fol. 5122] A. So far as the pig iron adjustment is concerned in the South, if you go into it, it isn't so very different.

We have got rates from Birmingham up to a new plant up at Toccoa—well, answering your question, we are not seeking any advantage. We are not seeking any advantage, and whatever adjustment is made in one section, we want it in our section.

Q. I am afraid you haven't answered my question, and I will ask the reporter to read it.

A. All right; that is the answer; we would not oppose it if that is the adjustment that is finally decided on as the uniform adjustment.

Mr. McCollester: I would like to have my question read to the witness.

(Pending question read.)

A. I don't know the rate. I started to make a statement about comparative rates, and it slipped my mind, and I don't know what that rate is, but if this Commission decides that is the basis that should be uniform, then we want it.

By Mr. McCollester:

Q. My question was, speaking for the Public Service Commission, whether you think there would be objection to the establishment of rates on pig iron from Birmingham to Atlanta on the New York State basis, which just about, if I am informed correctly, would double the rate.

A. I answer you again, we are not seeking any advantage; that if that is decided that it should be the rate in [fol. 5123] Official Territory, then we want that along with parity of everything else in the South.

Q. And you make your industries in Atlanta, that use pig iron, take it and like it.

A. I don't know if I could answer you any more definitely than I already have.

The pig iron adjustment, if that was found to be proper, our industries could live under it as well as yours.

Mr. McCollester: That is all.

Cross-examination.

By Mr. Clark:

Q. Do you think the Atlantic Steel Company would subscribe to that answer you gave to Mr. McCollester?

A. I wouldn't want to presume to say just what they would subscribe to, but knowing those gentlemen as I do, I think they would be willing to meet competition on an equal basis.

I think that you have raised a lot of questions here about pig iron, and Mr. Hart will be on the stand, and I don't want to get into a technical discussion of rates, but we are doing all right with our pig iron rates in the South.

Q. I am very much afraid, Mr. McDonald, that you want your cake and want to eat it to, is what I am coming to.

Go back to my question. Would you mind answering me? Do you think the answer you gave would suit the Atlantic Steel Company, which has a steel operation in Atlanta, Georgia?

A. I answered you before, I am not in a position to [fol. 5124] speak for the Atlantic Steel mill, and do not presume to do so, but industry generally in the South——

Commr. Aitchison (Interposing:) Wait a minute. He hasn't asked about that.

By Mr. Clark:

Q. I only asked about Atlanta. You are speaking here as Chairman of the Georgia Commission, of course, as we all know.

A. That is right.

Q. I don't understand you are speaking for industry generally, are you, any more than you are speaking for the Atlantic Steel Company?

A. I made the statement we were here responsive to the will of the shippers of the South.

Q. Mr. McDonald, the first shipper that I asked you about is a very large and important shipper of your present residence, Atlanta, and you very frankly told me you didn't speak for him. How could you make the general statement you speak for industry in the South?

A. You asked me, Mr. Clark, whether or not I spoke for this particular industry or a specific rate.

Q. Yes, sir.

A. I can say that a great many of our commodity shippers in the South go along with us in this effort with the feeling that it will improve section economically, and that even though they might suffer some loss in it, they are [fol. 5125] entirely willing to go along.

I don't know whether that is the position of the Atlantic Steel Company or not.

Q. I take it your testimony has applied generally.

A. Yes, sir.

Q. Surely you wouldn't undertake to speak for the shippers without the State of Georgia, would you?

A. I am appearing here for the Southeastern Association of Railroad and Utilities Commissioners composed of eight states.

Q. We have heard, of course, Mr. Hart and we have also heard Mr. Widell, and the contrary views of different ones.

Bearing that in mind, do you still say you speak for all the industry in the South? Let's see who you speak for.

A. I stated there is no organized group representing shippers that I know anything about that has gone on record against us, except the Southeast, Southwest shippers—something—that is an organization that has grown up out of resistance to this case.

Q. So there is some difference of opinion in the industry.

A. That much.

Q. Well, there is difference.

A. Yes.

Q. But you don't speak for all industry; isn't that true?

A. I tried to qualify it in my statement. I think I have made it clear.

[fol. 5126] Q. And you have proposed here to take the Official Territory level of class rates and commodity rates. Is that true?

A. Well, I haven't made any such proposal, Mr. Clark.

In answer to the questions here I have undertaken to say whatever the adjustment is, we want the whole adjustment.

Q. There has been much said about costs, so I am going to ask you to start with the premise, for the purpose of this question, that the cost of doing business in transportation would be the same for the two territories, north and south.

You recognize there is a very much larger volume of transportation in Official Territory than in the South, don't you?

A. Yes.

Q. With the difference in volume, the same costs, and the same rate level, don't you know it would have the inevitable effect on the lines of one territory making too much or lines of the other making too little.

A. I don't think it follows at all. You have got entirely different conditions up here—your investment, your cost of terminals——

Q. (Interposing:) That all goes into cost.

A. That is right.

Q. So when we start with the premise of equal cost, it takes care of and wipes out all of those; isn't that right?

A. No, I don't follow any such reasoning.

We have never felt that your premise that density was [fol. 5127] any justification for a different rate level.

Q. Let's analyze that a little further.

Suppose we were in the business of selling tablets to school children, and say I buy them at 4 cents and sell them at 5 cents.

Commr. Aitchison: I think you are getting a little argumentative.

Mr. Clark: This has to be a premise to bring out volume, if your Honor please.

By Mr. Clark:

Q. (Continuing:) Obviously, if you only sold a few tablets a month, or year, no business could live on that, but if you sold them by the tens of carloads you would make a very definite profit, would you not?

A. That follows.

Q. Isn't that a simple example of the effect of volume, applying that simple example to the dense traffic in Official Territory, as compared with the South, don't you know under the same level of rates, class and commodity, the Southern carriers could not live and give the service the South is really entitled to.

A. No, I don't know any such thing. You are a regulated business. You are entitled to a return on your investment, and on the whole, in the South, you have done better than have the carriers in the North.

Q. By virtue of recent years volume; isn't that true?

A. I don't know; I don't think so.

[fol. 5128] Q. Mr. McDonald, don't you know when we have thin traffic years we lines in the South are in very serious financial straits, and with the increased volume we can proceed to bloom, as we are doing at the moment. Doesn't that prove exactly what I am asking you, that volume controls this situation?

A. Of course volume does if you make a higher per cent, but I don't think that ought to control your rate structure, as you have in the past.

Q. My little simple example of the sale and resale of the tablets is illustrative of the situation, isn't it?

A. That is a logical statement, yes.

Mr. Clark: Thank you very much.

Mr. Norman: Well, Mr. McDonald, let's assume that the investment on which a return had to be earned was more, or the traffic was less dense, and taxes lower and various elements of that kind, might not that permit the road having the less density of traffic to make the biggest return on its investment?

The Witness: That was the substantial statement I made a while ago, that I think the conditions in the South are such that they have made more for those reasons, that they haven't the investment and do not have to have the volume in order to make a return on a regulated business.

Commr. Aitchison: It seems to me that Mr. McDonald is getting to the point where he is arguing this case. We are getting into the question of value, and we have some very [fol. 5129] sweeping statements. We have had some more precise testimony, and shouldn't that suffice?

The Witness: I think so.

Mr. Norman: I think that is correct, but I think inasmuch as Mr. Clark was permitted to bring out that side of it, that the other side might just as well be brought out also.

Commr. Aitchison: Let's attempt to get back into the regular line in some way.

Mr. Norman: That is all I have from Mr. McDonald.

Mr. Widell: I have one or two questions.

Commr. Aitchison: Mr. Widell.

Cross-examination.

By Mr. Widell:

Q. Mr. McDonald, on the question of your advocacy of rate parities, or rate equality in all sections of the country, I understand then that you advocate that right straight through from A to Z, classes, commodities, and everything. Is that correct, sir?

A. We are seeking parity in this case.

Q. You are familiar with the stove industry in the South?

Commr. Aitchison: Wait a minute, Mr. McDonald—parity with what? Make that more precise, Mr. McDonald.

The Witness: Well, Mr. Chairman, we recognize, of course, there might be some situations that would require local treatment, and Mr. Widell's statement undertook to commit me to the fact that there wouldn't be any [fol. 5130] exceptions in that rate structure, but as a general broad principle we are seeking parity in all the territories involved in this proceeding.

By Mr. Widell:

Q. In other words, then, on exceptions to the classification in Official Territory and commodity rates to suit the needs of consumers in Official Territory, you mean you desire to have the benefit of all that within the South too.

A. We think if they suit the needs of commerce in Official Territory that they will suit the needs of our people

too, and they have proven the fact that they have in the North suited the commerce in the North.

Q. With regard to, say, the stove industry, which is represented in Georgia to quite some extent, are you familiar with the character of the inbound traffic and the outbound traffic of the stove foundries in Georgia?

A. No, I am not.

Q. But you do know, don't you, Mr. McDonald, that on the rates from the stove foundries in the South to destinations in Official Territory the Georgia stove people have the benefit of the northern level generally mile to mile.

A. That is correct. That was one of the things in the Southern Governors Commodity Case.

Q. So they do have that parity, so to speak, today.

Now, then, let me ask you this. You know, don't you, from your general knowledge of what the stove industry [fol. 5131] is in Georgia and in the South, that the inbound movement is generally coke and molding sand, scrap iron and pig iron.

A. That is right.

Q. There are four, say, major inbound raw materials.

A. That is right.

Q. Do you not know, Mr. McDonald, that if the Georgia stove people had to pay the Official level, mile for mile, on coke that their costs, their freight costs on coke would increase substantially.

A. It is my recollection that coke was one of the commodities that was treated ahead of the Southern Governors Rate Case.

Q. Just to refresh your memory, was that not from the South to C. F. A. Territory, Central Territory?

A. Yes, it was.

Q. Where the Commission prescribed the Central Territory rates on traffic from the South to Central Territory?

A. That is right.

Q. Do you recall in that case we demonstrated the general level of coke rates in the South is substantially less than C. F. A.?

A. Yes, that is right.

Q. So that if you did get parity for the stove industry in Georgia, you would have to increase their coke rates, wouldn't you?

A. Yes.

[fol. 5132] Q. Isn't that true also of molding sand?

A. I don't know. We had occasion recently to look at the sand rates, the sand and gravel rates, over the country, but molding sand doesn't move on those scales, does it?

Q. Don't you know molding sand in the South moves on the common sand rates?

A. How does it move in the North?

Q. Don't you know in the North molding sand rates are higher?

A. I didn't know it, but, Mr. Widell, we have put into this record a good many other industries that would have been just the reverse of what you are describing here with your stove industry.

Q. We were just confining it to the stove industry.

A. Yes, but we represent more than the stove industry.

Commr. Aitchison: Let's have one of you at a time. If you must follow that course, please only one of you at a time.

By Mr. Widell:

Q. In the stove industry then your inbound scrap rates would be increased.

Pig iron rate would be increased. Isn't that true?

A. I don't know the adjustments of those rates. I think they would be over some territories and some sections and not in others, but if it is, why we are asking for uniformity.

Q. Let me ask you this——

Mr. Norman (Interposing): Mr. Chairman, I would like to object to this line of cross examination because I think [fol. 5133] they are going into a great many questions that are not here, and when I put a witness on the stand that even wanted to talk about a column rate he wasn't allowed to do it because it was not in issue, and now they are bringing a witness in here and talking about rates on every commodity you can think of.

Commr. Aitchison: It is perfectly obvious we would be able to continue the cross examination along this line until we would be here until Christmas, and still be according to that which has preceded.

I think we will have to ask you to get down to the issues of this case and confine them to that, even in cross examination.

Mr. Widell: The witness' testimony went directly to the question of what he calls rate parities, including class rates, commodity rates, and all other rates,

Commr. Aitchison: He was dealing—I don't want to argue with you, but he was dealing with respect to the position taken down there by the industries. Obviously we can follow the details of these rates unto the utmost relevant facts and still not exhaust our library, but it is not helpful to us, and it is not going to be decisive in this case, and you might just as well save your time and ours.

Mr. Widell: Thank you, sir.

Commr. Aitchison: Mr. Hollopeter.

Cross-examination.

[fol. 5134] By Mr. Hollopeter:

Q. Mr. McDonald, I would just like to have you clarify for the record the meaning that you intended from your repeated statement that you believe it has been proven that the column rates have been proper and adequate to serve industry there. What did you have in mind on that?

A. Well, I simply base that judgment on the fact that you have used it and you haven't gotten away from it with exceptions and column ratings as we have in the South, and then too the fact that industry has prospered under that system of rates.

Q. Would you say the rates on textiles, in connection with the textile industry, were proven to be proper for the northern industries when they have permitted large removal of that industry to another territory? Is that your thought?

A. I think there was an entirely different factor that moved your textile mills than your rates.

Q. That would follow then with other industries which may have passed through the same transition period, would it?

A. It might have.

Q. In other words, the rates were not all-governing and all controlling.

A. No, we have never felt that was our whole trouble in the South. It is just one of the factors.

Mr. Hollopeter: Thank you.

Commr. Aitchison: Any further cross examination. (No response.)

[fol. 5135] You may be excused.

The Witness: Thank you, Mr. Chairman.

(Witness excused.)

Commr. Aitchison: Whom will you have next?

Mr. Norman: I will call Mr. E. L. Hart.

You have been sworn in this case, have you, Mr. Hart?

Mr. Hart: Yes, sir.

E. L. Hart was recalled as a witness and testified as follows:

Direct examination.

By Mr. Norman:

Q. Mr. Hart, you have previously testified in this case?

A. Yes.

Q. You have prepared an exhibit to be filed in connection with your testimony?

A. I have.

Mr. Norman: I would like to have the exhibit marked for identification.

Commr. Aitchison: It may be marked Exhibit No. 220.

(Exhibit 220, Witness Hart, marked for identification.)

By Mr. Norman:

Q. You have prepared certain testimony to be offered in rebuttal of testimony that has been heretofore presented in this proceeding?

A. I have.

Q. I will ask you just to proceed with your testimony.

[fol. 5136] A. Some of the witnesses in this case were accorded considerable latitude when describing their connection with, and knowledge of the class rate structure.

For fear that perhaps this might influence the Commission in the relative weight given their testimony, I should like to supplement the record with respect to my connection with, and knowledge of the present class rate structure—particularly in Southern territory.

My omissions in this respect were not accidental by any means; but, rather, I had hoped thereby to shorten the proceedings.

My railroad experience, or transportation experience, if you wish to put it that way, began in 1905, and terminated in 1921, at which time I became associated with the Atlanta Freight Bureau.

During the period of my employment with the transportation agencies my experience embraced practically everything in railroading, except telegraphing.

I began with the railroads in checking box cars in the yards. I ended my operating career as Chief Clerk in the Division Superintendent's Office.

I then became bitten with the bug of the traffic department, and I switched over to that department and had a number of years experience in rate matters.

So it might be said that I have had pretty varied experi- [fol. 5137] ence so far as railroad experience goes.

Now, I think possibly the record should show the character of the organization with which I am presently employed.

The Atlanta Freight Bureau is a non-profit organization and was organized by the business interests of Atlanta early in the year 1902, some forty-one years ago.

That organization has been very active in transportation matters since that date.

The organization represents 98 per cent approximately of local industry in the Atlanta area, and a very large per cent of what we term foreign industry, or branch plants, or distributing houses of northern concerns.

We also officially represent the City of Atlanta, and the County of Fulton, by virtue of substantial contributions by those Governments to the maintenance fund of the Atlanta Freight Bureau.

The County and City are both represented on our Board of Directors by a member of each governing Board of the City and County, designated by the Mayor and the Chairman of the County Commission from year to year.

Our Board consists of 26 members supplemented by an Executive Committee. The Board is representative of a cross section of business in the Atlanta area, and for that matter, in the State of Georgia.

I referred to the State because our organization does [fol. 5138] represent the entire natural stone industry, that is marble and granite, in the State of Georgia.

Likewise, it represents the stove industry in the State of Georgia.

So, on our Board of Directors are executives of those two industries. I am merely using them as an illustration.

For instance, the stone industry is represented by the Vice-President of the Georgia Marble Company. The stove industry is represented by the President of the Atlanta Stove Works and the Birmingham Stove & Range Company. They own one of the largest stove factories in the South, which is located at Birmingham.

I could go on and enumerate the different industries that are represented but perhaps one other important interest might be referred to and that is furniture.

We are large manufacturers of metal furniture. In fact at one time Atlanta was the second largest furniture manufacturing center in the South.

Q. For metal furniture?

A. For metal furniture. We make considerable wood furniture, and as to mattresses I think Atlanta is the largest single producing center of mattresses in the United States.

The Simmons Company has a very large mattress factory in Atlanta, as does the other mattress manufacturer located at that point.

[fol. 5139] So it can be readily said that I have necessarily and am required to keep informed not only about general matters but rates affecting practically every sort of industry in existence.

The Bureau today includes approximately 275 members. Included in this membership are manufacturers, jobbers, retailers, and such producers as the crushed stone producers and quarries of minerals, so I think that I have a rather broad knowledge of the rate structure that necessarily affects our people.

Our relationship with our members as to the rate adjustment is just as intimate as if we were a part of their organization. It isn't academic by any means. It is a realistic association.

Immediately after becoming associated with the Atlanta Freight Bureau I began work on what was then referred to as the 1921 Georgia Revision, at which time the Southern carriers had before the Georgia and Alabama Commissions the complete revision of their class rates and also certain commodity rates.

It has always been the practice, or certainly has for the past twenty-five or thirty years, of the southern railroads

to use the Georgia rates, and to a lesser degree the Alabama rates, as a sort of guinea pig in testing out their interstate adjustments. How Georgia goes, is their slogan, goes the rest of the South with the possible exception of Alabama.

[fol. 5140] The 1921 Revision was more or less a hangover from what was known as the 1917 Revision which was undertaken just prior to the First World War. That was deferred until after the close of the War.

In the 1921 Revision the southern railroads proposed to the Georgia Public Service Commission a complete revision of the class rates based on the rates which they had in mind to establish interstate throughout southern territory. In other words the maximum distance in Georgia of 460 miles represented the Ohio River-Atlantic distance which was the key rate that the southern carriers used in working out their southern class rate investigation.

Therefore the scale submitted to the Georgia Public Service Commission on first class for the maximum distance in Georgia represented the proposed Ohio River-Atlanta first class rate. After all, that was really the beginning of the proceedings that later followed in Docket No. 13494.

I have participated since that date in practically every intrastate and interstate adjustment of any magnitude whatsoever involving rates within and from the South.

I think I can say without contradiction that I am the only man in the room, or maybe that will be in the room, that did not miss a single hearing in Docket No. 13494, including the Presiding Commissioner, Mr. Eastman, and the Examiners. Some of them were absent at times, but I never [fol. 5141] missed a hearing and I don't think any other man has a 100 per cent attendance so I have some conception of what took place during the pendency of Docket No. 13494.

Subsequent to the conclusion of that case I have participated in practically all of our inter-territorial controversies, if I may put it that way.

My exhibits Nos. 88 and 90 were prepared for the purpose of presenting a realistic, rather than an academic picture of the present class rate structure; and in my prepared statement (Exhibit No. 90) and supplemental oral testimony I purposely omitted submitting an extended historical summary concerning the development of the class rate

structure, particularly in that section of the country lying east of the Mississippi River; and I so stated on page 1 of my Exhibit No. 90, giving the reason for this omission.

Nevertheless, carrier witnesses, and particularly Witness Bell, for the State of New York have testified in great detail about the history of the Southern rates, all of which is well-known to the Commission. It was discussed at length in the Commission's report in Southern Class Rate Investigation and other subsequent cases.

It is my belief and contention that history has little control over the matter of casting a new rate structure, such as is here under consideration, which after all——

Mr. Grubbs: Pardon me, Mr. Hart.

[fol. 5142] If your Honor please, I think this is an appropriate place for me to register an objection to the statement that has just begun and to serve notice that I feel compelled to register any like protests.

I took two hours last night and two more this morning reading this document through and I believe it violates nearly every rule that has been set up for the submission of evidence, and very largely it is argument. There are very few facts in it.

This statement that he is embarking upon now is certainly argumentative as are the several paragraphs that immediately follow.

Mr. McCollester: Mr. Chairman, may I join in Mr. Grubbs' objection?

I have, of course, full appreciation that in matters before the Commission considerable latitude is and must be allowed to witnesses in discussing the sort of matters that we have here. However, we have reached the rebuttal stage at this time.

So far as the State of New York is concerned if we have presented any facts that are incorrect, or have failed to present complete facts, it is entirely proper for a representative of the South to show our errors and to put in evidence in contradiction or in amplification, and we welcome that, but it is not appropriate to indulge in ar-[fol. 5143] gument at this time, and I submit, your Honor, that 85 per cent of the 36 pages of this document is argument or characterization of the testimony, or remarks that testimony was not offered, or discussion that has no place in testimony.

Let me direct your attention to just a few little things here and there.

Look on page 2, the first paragraph, "No one has thus far testified in the investigation, nor has there been offered probative evidence." That is not rebuttal of anything.

Look at page 6. He there is testifying what Mr. Bell has testified to.

Look at page 9. He says, again talking of Mr. Bell, he "offers little, if any, convincing evidence in this regard." Those are matters for the Commission to decide.

At page 11, "It seems doubtful that Mr. Bell's exhibit No. 164 has any value in the instant proceeding."

Page 16, "Competent evidence introduced by both shipper and railroad witnesses in this case clearly shows"—that is not rebuttal.

And then we end up, Mr. Chairman, beginning about page 32, I think with a peroration that either belongs only in brief, as being argumentative, or if offered as opinion testimony is competent testimony only from a person who—Well, I would say a Doctor of Philosophy or History or Economics. I don't think certainly that Mr. Hart qualifies [fol. 5144] to give opinion testimony if that is what it is, but I think it is really argument and ought to be left for brief.

I would object to the whole thing, Mr. Commissioner, because it is impossible to separate out what is rebuttal from what isn't.

Mr. Bell: I desire to join in the objection made, and in addition to point out that this is a continuous reference to testimony of six different witnesses throughout, containing quotations ad infinimum.

Commr. Aitchison: You were permitted to put them in.

Mr. Bell: I was not permitted to orally put them in.

Commr. Aitchison: They went into the record just the same and they are in the record now.

Mr. Bell: If this witness is permitted to orally state this I ask permission to recall Dr. Duncan and ask to have him put his testimony in orally, without any interruption.

The Witness: Let me make this one statement because I have some responsibility, of course, in this.

I tried at the opening of the hearing to shorten this matter by not going back and rehashing all this ancient history and I made my statements very short and concise and then the northern interests came along and went

into all that history; they have opened it up and I merely was trying to more or less rebut that testimony to the extent that I felt it was pertinent to this case. That is all [fol. 5145] I have done. You can call it argument or what you please.

Commr. Aitchison: Well, it is a question whether the argument should be sworn to or not. That is what we have before us.

The Witness: I am just explaining why I did it.

Commr. Aitchison: Mr. Norman, you had something to say?

Mr. Norman: I just wanted to say this, Mr. Commissioner, that if you take this evidence and compare it with Mr. Bell's you will find that this isn't any more argumentative than Mr. Bell's, and when you go to answer a contention that has been made you of course must state what it is you are rebutting and that is what Mr. Hart has done, and in many instances it is opinion evidence that he is answering.

Mr. McCollester: You don't have to state what is not in the record in order to answer what is not in the record.

Mr. Bell: I was under the mistaken idea you had to state what you are rebutting, yourself. I agree with that statement, but the Rule prevented me from orally testifying.

Mr. Norman: If I understand your witness' evidence went in the record.

Commr. Aitchison: It is in the record. We had no objection to the testimony of Mr. Bell. I suppose you mean Mr. Charles E. Bell.

Mr. Norman: Yes, sir, and Mr. Oliver.

Commr. Aitchison: And we do have objection here. We [fol. 5146] want the facts that are here. This is not the time and place for argument. People who ought to hear the argument are not here and should not be compelled to wade through a big transcript in order to get the argument.

The best way to straighten this out, it seems to me, is to go off the record and informally go through this statement and for the Bench to indicate the matters which it considers argumentative, and it is up to Mr. Hart to put the rest in.

The Witness: Off the record.

Commr. Aitchison: Off the record.

(Discussion off the record.)

Commr. Aitchison: We will adjourn until 1:30.

(Whereupon, at 11:40 o'clock a. m., a recess was taken until 1:30 of the same day.)

[fol. 5147] Afternoon Session

2:00 p. m.

Commr. Aitchison: Proceed.

E. L. Hart resumed the stand and testified further as follows:

Mr. Norman: Mr. Chairman, in view of the fact that this has all been gone over now in very large part, I think it might just be copied into the record as it has been changed. Mr. Hart of course has some additional testimony that is not contained in that and he will indicate as he goes along where he is reading.

Commr. Aitchison: Very well.

The Witness: I don't recall, Mr. Chairman, just where I was stopped, but in any event I think up to and including the first paragraph of page 9, that we may pass that over without reading it.

Commr. Scott: Pardon me. Do I understand that we are to correct these as he goes along?

Commr. Aitchison: Off the record.

(Discussion off the record.)

The Witness: It is my belief and contention that history has little control over the matter of casting a new rate structure, such as is here under consideration, which after all, is a legislative function that looks to the future, rather than a judicial one that, necessarily, must give due [fol. 5148] consideration to what has been done in the past.

While history is, of course, always interesting, the people for whom I speak are not relying on history to support the contention that the present class rate structure is antiquated and fails to meet the needs of commerce under present conditions, unless it can be said that the historical background of the present rate structure supports such a contention.

In the testimony of Witness Ellison, beginning at page 3486 and continuing through page 3490 of the record, he leaves the impression that perhaps I incorrectly stated the

situation with respect to the rates on important classes of traffic which are unrelated to the Index 100, or 1st Class, rate as compared with rates on traffic that are definitely related to such Index 100 first class rate.

Apparently, he missed the point that I was making, i.e., that the patterns of the rate structures in Official and Southern Territories had become almost identical, whereas this was not so prior to Southern Class Rate Investigation, Docket No. 13494, and that, because of this condition, I regarded the problem of unifying the class rate structures in Southern and Official Territories to be much more simple and decidedly less complicated than it would have been at the time the Southern Class Rate Investigation was instituted. The Commission referred to this at some length in its report in that case.

Mr. Ellison goes on to show that, as to the proportion of [fol. 5149] tons originated or carried, as related to the total tonnage of the railroads, the greater percentage moved under rates unrelated to the Index 100 first class rate, which, of course, is true in both Southern and Official Territories, when measured by tons transported. My point was, that as to the type or character of rates applied to the different classes of traffic transported by the railroads, comparatively few in number were transported on commodity rates unrelated to the governing 1st class Index 100 rate, and was directed entirely to items or ratings, and not to tonnage.

This statement of fact is confirmed by the testimony of Witness Crane for the Southern railroads, and is dealt with in detail by Witness Morris at pages 1 to 30, inclusive, of his Exhibit No. 15 introduced at the Indianopolis hearing. Therefore, there should be no confusion about my statement in this respect.

Likewise, this important class of traffic moves in Southern territory on a commodity rate scale unrelated to the Index 100 1st class rate.

Mr. Ellison then went on to compare the precise rate levels on different classes of traffic in the South with those in Official Territory, which showing, apparently, was promised on a misunderstanding of the purpose of similar comparisons which I made in Section III-D of my Exhibit No. 88. But, even so, some of his conclusions drawn there-[fol. 5150] from are not in accord with the facts. For instance, on page 3505 of the record the categorical statement

is made that the Southern rate level on brick is lower than in the North.

While there is a general departure from the normal basis prescribed by the Commission in Docket No. 1885, 88 ICC 543, for the shorter hauls in the South, for the purpose of meeting truck competition, nevertheless, there are similar departures in Official Territory; and, in many instances, the long haul rates from actual producing points of brick and related articles are no lower in the South than in the North, while, in other instances, the Southern rates are lower. But only by a traffic test, which would disclose the weighted average level, could a proper comparison be made between the two rate levels.

However, as previously stated, my purpose was not to test the rate levels, but, rather, to test the rate pattern; and, as to brick and related articles, they are accorded commodity rates unrelated to the first class 100 rate in both Official and Southern Territories.

Mr. C. E. Bell, rate witness for the State of New York, testified at length. The purpose of his testimony apparently was to support the perpetuation of the old order of things in rate construction, disregarding altogether the revolutionary changes that have taken place in the more recent past—and certainly long since he left the employ of the railroads.

[fol. 5151] The contention of this witness for the need for territorial differences in rates (p. 3399) is repugnant to the evolution taking place in the rate structure in both Official and Southern Territories, beginning in the first decade of this century, whereby almost all of the territorial boundaries which existed at that time have been erased, leaving only the territorial boundaries dividing the principal geographical sections of the country.

In the first instance, these artificial boundaries were dictated by the controlling influence of a single railroad or group of railroads serving a particular section. The practice of dictating rate policies in these circumscribed areas preceded later control of rate policies by the railroads predominantly serving each of the geographical sections of the country. The only difference was in the degree of the control. Some of the more important former territorial boundaries are portrayed on Sheet I, of my Exhibit No. 88.

Mr. Bell, likewise, omits reference to the discard of the territorial rate boundaries as to express and passenger

rates. It is my judgment this is a matter he should have also considered.

However, Mr. Bell's testimony directed to the development of the rate structure in the eastern section of the United States is not accurate. For instance, on page 3400 of the record he refers to the rate structure in Official Ter- [fol. 5152] ritory as related to industrialization in that section; but his description of the situation fits principally New England. This is confirmed by his reference to the movement of cotton from the South to New England on page 3406 of the record.

Certainly, the industrial development of Official Territory in the section west of Pittsburgh some years later; and the rate structure in that section of Official Territory was made adaptable to its industrial development in the CFA Class Scale Case, decided in June, 1917. (45 ICC 245).

Mr. Bell, at page 3413 of the record, in replying to a question from Commissioner Aitchison, made a very general statement concerning the character or the pattern of the rate structure in Official Territory, which implies a situation that does not exist as a practical matter, although Mr. Bell admits there has been a rapid change in the pattern of the rate structures in Official Territory since the decision in Eastern Class Rate Investigation, caused primarily by competition between the railroads and the other forms of transportation.

In other words, the general patterns of the rate structures and the rate levels in Official and Southern Territory are now much nearer together than they were at the time the Commission was considering the class rates in the East. Mr. Bell supports this conclusion at page 3416 of the record.

If it should be inferred from testimony such as that on [fol. 5153] page 3408 of the record concerning cottonseed oil that it was predominantly converted into finished products in the South; but this is not the case. This is one of the important Southern semi-raw materials that go to Official Territory for processing. In any event, the Commission is fully informed concerning the marketing of cottonseed oil, by virtue of its consideration of these rates in Docket No. 17,000, Part 8, 188 ICC 605.

A further illustration of Mr. Bell's effort to gloss over, so to speak, the factual situation at this time, are such statements as occur at page 3421 of the record, viz:

Mr. Bell, on page 3421 of the record, referred to supposed policy of the Southern railroads to make low commodity rates on inbound commodities on which they might secure the outbound hauls of the finished or processed products. This was especially true of rates on logs and billets for the manufacture of furniture, veneer, and so forth, also on iron ore, coal, limestone and pulpwood, and that:

These old low inbound rates are still reflected in the structures, for instance, on the log structure within the South. It is true that there are published in the South so-called net transit rates on logs for the manufacture of veneer and other products, but, as to logs, the situation in the [fol. 5154] South is not far different from that in other sections of the country. In addition, the old log transit scales which Mr. Bell refers to have subsequently become more or less modernized by virtue of truck competition and numerous complaints before the Interstate Commerce Commission. Some of the more important of these cases are shown on page 2 of his Exhibit No. 164.

Mr. Bell testified at some length concerning the rate levels on so-termed raw materials in the South, and among those referred to on page 2 of his Exhibit No. 164 was logs.

Mr. Bell's comparisons were between the rates that the Commission has prescribed on logs in Central Freight Association Territory, commonly referred to as the Indiana Case, in which rates were made 65 per cent of the then existing Sixth Class Rates.

By comparison he uses the co-called Pierpont Scale, which was described by the Commission in 50 ICC 81. That scale, it is true, as stated by Mr. Bell, has pretty general application in Southern Territory for the longer distances. However, *that* since that scale became operative generally in the South numerous departures have been made from the scale particularly for distances within the range of 125 miles.

It also should be stated that within a number of the Southern States, in Georgia, for instance, the old so-called lettered Class P rates are still applicable on the logs when shipped into mill points for transit and further manufac-

[fol. 5155] turing, so Mr. Bell's exhibit is not indicative of the level of the rates on logs in my opinion in either Southern or Official Classification Territory.

To indicate that there are rates in certain sections of Official Territory which he did not refer to, I have prepared a comparison which is shown on Sheet 1, of my Exhibit No. 220 to indicate that in certain sections of Official Territory there are rates on logs on a mileage basis that are comparable with the Southern Scale.

In other words, Mr. Commissioner, it is my position that a mere paper comparison such as Mr. Bell makes, and then takes the position that that represents the identical level of rates on logs, for instance, in the two territories, is not true.

The only way in which that exact difference might be determined would be to take a weighted average of the rates in all of Official Territory as compared with all the Southern Territory. That is the only manner in which an exact comparison could be made of the existing rate levels.

Mr. McCollester: You don't attempt to supply that, do you?

The Witness: I merely picked out certain illustrations to show they are as low in the North as they are in the South, in certain sections, but not in Indiana.

On page 3423, Mr. Bell refers to what he terms my criticism of the Commission's action in Southern Class Rate In-[fol. 5156] vestigation with respect to the percentage relationship—lower classes to 1st Class—proposed by the Southern Traffic League in that proceeding, and adopted by the Commission.

It is true that Mr. Harry T. Moore, my predecessor, was one of the principal proponents of the relationship—lower classes to 1st Class—proposed by the Southern interests in this case, and presented by him as a witness for the Southern Traffic League.

The relationship was worked out by a committee of the Southern Traffic League, composed of Mr. J. T. Ryan of the Southern Furniture Manufacturers Association, High Point, N. C.; Mr. Hugo Ignatius, now General Traffic Manager of the International Paper Company; Mr. Moore and Mr. Joseph C. Colquitt, formerly with the Commission, who was employed to assist the Committee.

As the one charged with the duty of preparing rate exhibits, and so forth, submitted on behalf of the Southern

Traffic League and others in this case, naturally I took part in the many deliberations of this committee. The adoption of a standard relationship of lower classes to 1st Class in conjunction with either the first class rates proposed by the Southern shippers or Southern railroads in this case represented a vast improvement over conditions then existing.

Mr. Bell commented at some length on the percentage relationships lower class to 1st Class which this Commis- [fol. 5157] sion prescribed in the Southern Class Rate Investigation and adjusted the manner in which those class rate percentages were arrived at before they were proposed by the Southern Shipping interests in that case and later adopted by the Commission.

I did want to supplement that statement by saying that in arriving at those relationships we gave very careful consideration to the many class rate scales that were then in effect in Southern Territory.

For instance, we had one scale on the A G S; three of the A B & A which is now the A B & C; eight of the A C L; six of the Central of Georgia; two of the G S & F; one of the G M & O; two of Illinois Central; three of L & N; one of M & O; one of M C & St L; one of St. Louis & San Francisco; ten of the Seaboard; seven of the Southern Railway; and one of the Y & M V, which was then not a part of the Illinois Central.

Those class rates were tested from 5 miles on out to the full length of those scales together with our relationships, and I am merely stating that to show how much consideration we did give to those relationships lower class to 1st Class.

We also had before us in the consideration of that particular matter the scales that you mentioned yesterday, Mr. Chairman, that the Director General put out where one scale was predicated on applying the percentage relationships under the Western Classification as compared with the Southern classification, so I want it clearly understood [fol. 5158] that those relationships were not just picked out of the air, and of course we had to bear in mind the relationships that were then existing in Official Territory which were not uniform by any means, being different in the different sections of the country, and also overhead rates between Trunkline Territory and Central Territory were on the McGraham Formula and had a different rela-

tionship, but all of that was considered at the time we proposed those relationships in the Southern Class Rate Investigation.

Suffice it to say that these relationships—lower classes to 1st Class—were also agreed to by the Official Territory shippers who took part in this proceeding—particularly the New York and Chicago shipping interests.

I might as well state here that the Official and Southern Territory shippers were pretty well together in the Southern Class Rate Investigation; and, while it might appear paradoxical in the light of what has transpired since that case was concluded, nevertheless, the facts are that the rate exhibits introduced in this case by the New York shipping interests, for whom Mr. Bell is here testifying, and the rate exhibits introduced by the Chicago shippers, were prepared under my supervision in Atlanta, Georgia, by virtue of a cooperative arrangement worked out between these interests and the Southern Traffic League, although the exhibits were introduced by appropriate witnesses representing the Official Territory shippers.

[fol. 5159] Mr. Bell, on page 3424, also seems to take exception to my criticism of the percentage or column formula of constructing rates on various classes of traffic—particularly carload traffic—which has become so popular in the more recent years, I think that Mr. Bell probably misunderstood my criticism of the use of this formula of rate construction, because it was premised primarily on the result of its use in conjuction with the governing 1st Class 100 rates prescribed by the Commission in the Southern and Eastern Class Rate Investigation.

Although I cannot speak for the Official Territory interests that participated in the Southern Class Rate investigation, nevertheless, I can say with assurance that had the Southern shippers been able to foresee such a situation as has developed in this respect, a very different case would have been made by them—particularly with respect to the interterritorial rates.

I agree with Mr. Bell that if the Index 100 rate is proper, perhaps the percentage or column formula of rate making tends to simplicity in rate publication and is not particularly objectionable on traffic that moves generally.

Beginning on page 3424 and continuing through page 3420 of the record, Mr. Bell discussed at some length my criticism of the class rate structure approved by the Com-

mission in the Southern Class Rate Case between trunk line and New England Territories and the South which stemmed [fol. 5160] from a plan of rate making adopted more than fifty years ago by the Coastwise steamer lines in conjunction with their Southern rail connections whereby through one-factor class rates on a non-concurrence plan were operated by the Coastwise lines, and which had the effect of controlling for these lines and their Southern rail connections a large proportion of the south-bound traffic moving from Eastern Seaboard Territory to the South, which condition was perhaps given too much consideration by the Commission in the Southern Class Rate Case.

While approving the general plan previously adopted by the water and rail-routes, the Commission, in the Southern Class Rate Case, condemned the non-concurrence plan of publication of Rail-Water-and-Rail rates between these territories. The reasons given by the Commission for the approval of the Southern carriers proposal to continue the general plan of constructing rates between the East and the South are explained in detail in its report in the Southern Class Rate Investigation.

However, this condition certainly has not existed recently. Certainly no water line continues to control the rates from the interior East. Under the present law they would not be permitted to reestablish the old plan of non-concurrent rates in order to attract the traffic.

Even at the time of the Commission's decision in the Southern Class Rate Case there was no practical reason [fol. 5161] why the all-rail rates from Trunk Line and New England Territories to the South should not have been made on the Q-1—K-2 basis observed in constructing rates from other sections of Official Territory, and to the extent that the rail-and-water routes were desirous of participating in this traffic, appropriate differentials necessarily would follow.

I desire to reiterate my previous position that the approval of this adjustment by the Commission in Southern Class Rate Investigation was a fundamental error, and the incongruities that flow out of same are indefensible. Some of these were pointed out in my Exhibit No. 88.

As all of the Coastwise lines are now subject to the jurisdiction of this Commission under Part III of the Transportation Act, there appears to be little reason for this situation to be continued.

Mr. Bell raised the point to the effect that should the all-rail rates between the South and Trunk Line Territory be constructed on the present Official Territory level, differential rates via the water routes would, therefore, become lower; but, such a situation is no different than that which obtains in the rates between Trunk Line Territory and CFA Territory, i.e., the rates via the all-rail routes versus the differential routes.

In other words, if there were a uniform system of class rates in the territory east of the Mississippi River and a [fol. 5162] shipper of 1st Class articles located at Chicago and Atlanta shipping into New York City, the all-rail 1st Class rate would be approximately the same; and it is conceivable that the Coastwise lines operating from the South Atlantic ports might desire to establish a differential 1st Class rate from Atlanta to New York, which would in effect coincide with similar differential rates maintained from Chicago to New York. But New York would also benefit in the sale of its manufactured products in the South.

I did want to discuss a little bit further the matter of the inter-territorial rates that were prescribed in the Southern Class Rate Investigation between Trunk Line and New England Territories and the South via both the all-rail routes and the water-and-rail routes.

I think perhaps this Commission's attention in this connection might be directed to a memorandum filed by the Southern carriers on October 6, 1925, in ICC Docket No. 13494, Southern Class Rate Investigation, which deals at some length with this situation that I have referred to between Trunk Line and New England Territories and Southern Territory.

Mr. Bell's Exhibit No. 164 shows a number of selected classes of traffic and the present rate levels in the South, compared with those applied on the same classes of traffic in Official Territory.

As I have previously stated, the comparisons which I [fol. 5163] made on various classes of traffic moving on commodity rates unrelated to the 1st Class 100 rate was for the purpose of offering proof in support of the contention that the rate pattern in the two territories is practically identical today.

In other words, my purpose was to show that as to these particular classes of traffic, all of which move in large vol-

ume, they were accorded rates in both territories unrelated to the first class 100 rates. They were not for the purpose of making a comparison of the paper rate levels which they would represent in many instances, because as is the case with Mr. Bell's comparison the actual rate level could only be determined by a weighted traffic test.

A much more elaborate showing of this character was filed by me in the Southern Textile Case, I. & S. Docket 3636 as my Exhibit No. 532 consisting of some 100 pages, wherein I compared the rate levels in the two territories on every class of traffic of consequence. But because of the reasons which I have just stated the Commission discounted such a showing as having little probative value without proof as to the actual level of rates applying on the various classes of traffic set out in my exhibit. Likewise, in my opinion Mr. Bell's Exhibit No. 164 does not disclose the full fact except perhaps to support his repeated statements that the rates on low grade commodities have been made on a lower basis in the South than in the North. [fol. 5164] I do not agree that because the Southern carriers have made lower rates on so-termed low grade commodities and on raw materials than have the Official Territory carriers in the Great Lakes and Central-Eastern regions it follows that the Southern carriers must maintain higher rates on the higher grade traffic, as this premise fails to give consideration to the heavy increase in relatively high grade traffic, in Southern Territory such as papers, a higher relative level of rates on which certainly would not be justified in the South solely because of this historical consideration.

Neither does the fact that the Southern fertilizer rates were reduced because of truck competition argue that the rates on papers, for instance, should be made higher in order to make up the revenue the Southern carriers lost on the fertilizer tonnage which they handled on the reduced rates as compared with the rates found reasonable by this Commission, and which were higher than the rates prescribed for application in Official Territory. I do not understand why fertilizer was included in Mr. Bell's comparison except for this reason, because it is not a raw material, nor is it really a low grade commodity. A significant factor that Mr. Bell does not state is a comparison of the two rate levels on bituminous coal which is by far the largest single low grade tonnage moving in Southern Territory, and

naturally has a very direct bearing on industrial expansion. [fol. 5165] To the extent that there is increased origination in the South of processed commodities, it must follow that the ratio of low grade tonnage to the total tonnage originated by the Southern railroads will change materially and supports our contention in this case.

On page 3599 of the record, responding to question by his counsel, Mr. Bell stated that it was his opinion that the great difference which he had been pointing out in the volume of iron and steel movement in Official Territory and in the South and in the possibility of such movement because of the presence of raw materials in Official Territory constituted an important distinguishing factor affecting both the pattern of the rate structure in Official Territory as distinguished from that in the South and the tonnage available to the Official carriers to defray the transportation burden in Official Territory. This conclusion was expressed in connection with the subject that he was discussing, i. e., the distribution of the traffic burden.

However, I fail to follow the connection it has with the pattern of the Official Territory rate structure, as I construe and have used this term, unless he has in mind that the proportion of a given kind of material used in the Official Territory rate pattern which I claim to be almost identical with that of the Southern rate structure was different from that used in the Southern pattern. The relative importance [fol. 5166] of the distribution of the traffic burden in Official Territory versus the South seems questionable so far as this case is concerned.

On pages 3606 and 3607 of the record, one of the group of commodities referred to which constitutes an important proportion of the traffic in the Central-Eastern and Great Lakes regions, and which he claims in the nature of things cannot be originated in similar volume in the South, in glass, other than plate, glass bottles, jars, et cetera.

It is an incorrect assumption that glass of this character cannot and is not economically produced in the South, or that at some future time the volume might not reasonably be expected to be comparable with that produced in the Central-Eastern region. Flat glass, for instance, is now produced in large volume in the eastern section of Tennessee and not so far distant from competing producing points located in the lower portion of the Central-Eastern region, although the rates from Tennessee producing points are

higher relatively than from the competing producing points north of the imaginary line that separates the two regions.

These higher rates from the producing points in the Southern region were prescribed by this Commission because of assumed difference in transportation conditions whatever that term covers and are referred to on Sheet 5, Section III-A of my Exhibit No. 88. Glass bottles are also [fol. 5167] manufactured in the South in considerable volume. White glass bottles are produced in volume at Laurens, South Carolina, Jackson, Mississippi, and Jacksonville, Florida. Blue glass bottles are produced in volume in Chattanooga, Tennessee, and at Laurens, South Carolina.

The prevailing rate level on glass bottles, carload, in the South and inter-territorially is the Classification basis of 7th Class or 35 per cent of 1st Class, and is approximately 175 per cent of the prevailing rate level in Official Territory. (See Sheet 2, Section III-B of my Exhibit No. 88) (Mr. Oliver on page 3858 of the record refers to both the Official and Southern levels as being established to meet truck competition).

While efforts have been made to secure northbound rates into Official Territory on the prevailing level applying within that territory from at least one of the Southern producing points of glass bottles, these efforts have not been successful. There have been other productions of glass bottles under consideration in the South which were not ultimately developed for various reasons.

The difference in rate levels on glass bottles has a very decided influence on other Southern industry, particularly manufacturers of liquids, such as drugs and medicine, wine and so forth, because of the pricing system of the manufacturers of glass bottles, wherein the Southern user is [fol. 5168] compelled to pay a relatively much higher price for bottles even when purchased from the Southern manufacturer than does a similar user located in Official Territory.

For instance, the price on certain types of white bottles delivered in Atlanta on a per gross basis is the same whether it originates at Jackson, Mississippi, Jacksonville, Florida, or Alton, Illinois, but the price is controlled by a base price at one of the Official Territory producing points plus freight to the Southern consuming point.

The transportation cost to the Southern users of glass bottles being 75 per cent higher than to a similar manufacturer located in Official Territory. In other words, the delivered price of glass bottles in Official Territory, which is fixed by the Official Territory producers, even when shipped from a Southern manufacturing point, is much less than to a Southern consuming point of equal distance. This condition in certain instances has controlled the location of the manufacturers of patent medicines. However, there appears little justification for the Southern rate level to be 75 per cent higher than the Official Territory level, mile for mile.

On page 46 of Exhibit No. 165, Section I, Mr. Bell refers to twelve commodities which he states are in the nature of low grade heavy loading commodities on which the carriers in Southern region have seen fit to maintain rates on a level generally the same as or lower than the level of [fol. 5169] rates in Official Territory. This list included sewer pipe and drain tile. Certainly these commodities are not low grade, heavy loading commodities. Nor are the rate levels in the South as low as or lower than those in Official Territory on artificial stone, plaster or cement or fertilizer, except with respect to the short haul truck competitive rates on fertilizer previously referred to.

Mr. Bell, in discussing his Exhibit No. 165, referred to certain heavy loading low grade commodities which he listed on Sheet 46 of that exhibit.

It includes the artificial stone. I don't know why he would select artificial stone any more than he would some other class of stone, but Mr. Bell apparently overlooked the fact that the rates on artificial stone of all finishes were prescribed by this Commission at the same time that the rates on natural stone were prescribed in the Consolidated Stone Cases. Therefore I don't understand just what rates Mr. Bell has reference to when he refers to those on artificial stone.

The actual rates on artificial stone, which are the same as natural stone, are shown on Sheet 8, Section 3-B of my Exhibit No. 88.

I also am unable to connect Mr. Bell's statement with respect to the level of rates on cement and plaster because the rates in the South are, generally speaking, higher than [fol. 5170] they are in the North, except as to New England Territory, so it would not be a correct statement that the

rates on cement in the South are lower than they are in the North.

This is equally true as to plaster. Plaster in the North goes on a mileage scale, which this Commission has approved, while in the South it moves on a percentage of the 1st Class rate and is much higher relatively than the mileage scale that is applied in the North.

That is equally true as to plaster board.

On page 3615 of the record Mr. Bell discusses the list of commodities in appendix LL Exhibit 14 introduced by Dr. Aitchison. There seems to be considerable difference of opinion as to whether the term "commodity rates" properly include so-called column rates which are definitely related to the 1st Class rate, either by exceptions to the Classification or in the Classification proper. These ratings may, in some instances, be stated as Column 27½, for instance, or Class 27½.

Mr. Bell states that practically the entire movement of fresh fruits and vegetables in the products of agricultural group is on commodity rates, whereas a large part of the movement is on column rates or rates made a definite percentage of 1st Class and were prescribed by this Commission.

Likewise, he refers to rosin as moving on commodity rates, whereas it moves predominantly on a percentage [fol. 5171] of 1st Class which was likewise prescribed by this Commission. While I agree that perhaps many commodities which move on this type of rate are not directly covered by this investigation, so far as I know, until this investigation was under way, most every one considered this type of rate as a part of the class rate structure and not what was commonly referred to as commodity rates.

Certainly it cannot be said that the Index 100, or 1st Class rates, do not in many instances control rates made a definite percentage of such rate regardless of what they are termed.

In discussing the practice of both the railroads and this Commission in fixing rates on numerous classes of the traffic directly related to the governing 1st Class Index 100 rate, where the question has arisen concerning the difference in the two rate levels as expressed by the 1st Class rate which I wish to refer to as being 38 per cent, there seemed to be some question certainly that — the

Commission nor the railroads gave that very much consideration in fixing the rates on different classes, but this is not so.

I think maybe reference to one case between the South and the North will suffice, and it indicates the action of the Commission in that particular case, which involved the rates on canned goods between Southern and Official Territory entitled "Investigation and Suspension Docket 3401," reported in 179 ICC 77, and I would call particular [fol. 5172] attention to Commissioner Lee's dissenting opinion in that case appearing on page 100. I think he fairly stated the situation in that respect.

Then a more modern case, so to speak, where we are confronted with that possibility had to do with the rates on wood charcoal from the South to destination in Western Trunk Line Territory, Docket 2608, 253 ICC 543.

There the Commission just recently prescribed rates on charcoal from the South to the Northwest, the same percentage of first class that obtains within the Northwest.

If that principle was followed out in the rates on charcoal from the South to Official Territory which has also been prescribed by this Commission, it would represent quite a material increase in the present rates, but the point I am making is we have to be confronted with these prescriptions by the Commission and voluntary action by the railroads of relating different classes of important traffic to these going 1st Class rates, and which makes the level the same as between the 1st Class rates.

Commr. Aitchison: We could have largely avoided that, couldn't we, if the guide had been used of, taking we will say 3rd or 4th Class as the governing class following that 1st Class, relating rates below it by numbers and rating the higher classes by multiples of 1st Class?

The Witness: There are a good many ways to do it. That is one, but there are a good many ways to do it. They [fol. 5173] could also make the levels the same by making a lower percentage of the Index 100 rate from the North to the South and within the South. There are many ways of doing it.

Commr. Aitchison: Another way would be, taking the British way, the lowest class and calling that Class 1, and then coming upward to the limit, to the sky.

The Witness: I have seen a lot of formulas but of course they all have a particular objective depending upon the

author of the formula, so that is our trouble. We have a formula that will give us what we want and the other fellow has one that gives him what he wants.

Commr. Aitchison: If we are going to study this question of the freight problem in the two territories it is your thought we can simply look at the 1st Class and say "There is the difference?"

The Witness: Well, as a practical matter I would say not, Mr. Commissioner, but that is the trend of affairs, and we found ourselves in the same predicament as the fellow with the horse and buggy and the automobile comes in and he finally concludes that he is going to do away with the horse and buggy and get him an automobile.

We didn't like this column fixing that this Commission began early after the Southern Class Rate Case became effective and the Consolidated Southwestern Case, which was six months later, but we were forced into accepting it [fol. 5174] as a means of revising these many commodity classes of traffic that followed, and we sort of got on the band wagon with the rest of them although we felt ourselves that probably that wasn't the proper way to approach it.

Commr. Aitchison: If we were going to get an Index, or more than one Index of the relative level in the South and in the adjacent territories, what is your thought as to how many indices we should have? Do you have an opinion you would care to express?

The Witness: I don't know whether your question is broad enough to carry with it all classes of traffic.

Commr. Aitchison: Yes.

The Witness: Or whether we are dealing with class rates as we know it.

Commr. Aitchison: With all traffic as well as class rate traffic.

The Witness: Of course my own personal views are that there should be two scales, a carload scale and an l.c.l. scale. As to the less-carload scale it need not be composed of very many classes.

Commr. Aitchison: I am wondering whether or not you would break it up further than that and look at the products of agriculture as a whole, the products of mines, the products of forests in like manner, merchandise, less-than-carload.

The Witness: The only refinement I would make, Mr. [fol. 5175] Chairman, might be to break up your carload traffic into light loading versus heavy loading, which I might also do with respect to your less-carload traffic.

For instance, there might be a long difference between say reed furniture l.c.l. and iron and steel l.c.l., but I think still that even with that wide difference in weights per cubic foot that we would need very few classes as such.

I think maybe your carload traffic might be a little more refined than just having the two groups as I suggested.

Commr. Aitchison: I am not speaking about the classification.

The Witness: I am talking about rates.

Commr. Aitchison: I am trying to find out what the levels of the rates are comparatively.

Mr. Norman: Present levels?

Commr. Aitchison: Yes, indices, and I am wondering whether we should take and work, we will say, in the production of agriculture and try to find out what the levels are on that; the products of mines the same way, the forests likewise, and the manufactures we will say as a whole, and less than carload as a whole, or perhaps split up. Do you think one could be devised which would show the relative rate levels in the South and in adjacent territories and mean anything?

The Witness: I think so. I think you could take either index, Index 100 in either territory. It would require a [fol. 5176] traffic test in order to find that level. You could get a weighted level. Whether that would represent actually the rate level, I don't know, but I believe it would be as near as you could get it. Certainly you couldn't take a paper level.

Commr. Aitchison: You wouldn't be able, after you had done all that and gotten your actual charges and weights and so on and so forth and the rates applied to the rates in the one territory and attempt to contrast it with the other; you would immediately run up against the question, is the traffic similar.

That is the reason I am suggesting for your consideration whether we need more than the one index.

The Witness: I don't think you need but the one index. That is my own conclusion about it. One index is sufficient.

Commr. Aitchison: How would you go about it to get that index?

The Witness: I don't know that I am prepared to expound that at the moment.

Commr. Aitchison: All right.

The Witness: I have some ideas about it. I don't know whether they are sound or not.

Chmn. Alldredge: On the other phase of that discussion which you just briefly mentioned as to a revised rate structure, if the classification of articles were converted to a percentage basis, rather than a numbered or lettered class, [fol. 5177] say a certain percent of the basic rate, would there be any necessity in publishing in the rate tariffs more than just one basic class rate?

The Witness: No, there would not be. You would have to provide in the tariff a percentage table somewhere in the tariff to be applied against the Index 100 rate. That would be all that would be necessary.

Chmn. Alldredge: If you had a basic 100 per cent scale, we will say, and the classification showed that a certain article was 70 per cent, indicating 70 per cent of that, and you had a uniform simple fraction rule wouldn't that simplify the situation with regard to tariff publication?

The Witness: Yes, it would simplify it very much.

Chmn. Alldredge: Thank you.

Commr. Splawn: This testimony about these rate levels, and so on, you are not suggesting we have all these rates before us in this proceeding, are you?

The Witness: No, Mr. Commissioner. I think it is unfortunate indeed that these rates have been brought in here. We didn't bring them in but somebody thought we did, apparently.

Commr. Splawn: Were they brought in in an effort to approximate rate levels in different rate territories and show whether or not there is a difference and how much perhaps? Was that the purpose?

[fol. 5178] The Witness: I think surely that was the purpose of the witnesses that have brought in these commodity studies, except my exhibits in the first instance, which were merely in these showings as to commodity traffic, is to show the Commission which class of traffic moved on strictly commodity rates unrelated to 1st Class and which moved on rates that were related to the class rates.

By doing that some of the opposition to Southern papers contention presumed I was trying to compare, I suppose,

the rate levels as such, which I was not trying to do. I was merely comparing the patterns of the rate structure of the whole, and Mr. Bell comes along and in his Exhibit No. 164 attempts to compare the actual rate levels which are not actual rate levels; they are paper rate levels because there is no way in the Lord's world you can arrive at those exact levels without a traffic test. It is not possible to do it, but so far as their showing goes they are all right so far as the paper showing is concerned.

Chmn. Alldredge: Traffic tests something like you indicated on logs?

The Witness: Yes, unless everything moved on that scale; then that would be a proper test, but I don't know of any instance in which that occurs.

Commr. Splawn: This testimony you are giving, this exhibit, if I understand, is merely criticizing the study of rate levels that has been made.

[fol. 5179] The Witness: Yes, I have criticized it pretty well throughout.

Commr. Splawn: Is that the purpose of the testimony?

The Witness: Yes, I question its value at all as to this case.

Commr. Splawn: The purpose is not to enable us to find the rates on all these commodities?

The Witness: No, sir; I don't think you can from these exhibits. I don't think it is possible to determine what the rate level is on any of these commodities.

Commr. Splawn: You heard the testimony of Commissioner McDonald this morning?

The Witness: Yes, sir.

Commr. Splawn: As I understand him the desire of the Public Service Commissions in several of the Southern States is for parity of all rates on all commodities, and within, from, and to the South, to all these rate territories. Is that a correct statement?

The Witness: I think that was probably—I will put it this way; maybe the choice of words was unfortunate perhaps but I think it is true generally.

Of course Mr. McCollester brought up the question of pig iron moving from Birmingham to Atlanta vs. Buffalo to Albany.

Of course Mr. McDonald didn't know, as he probably was [fol. 5180] not expected to know that you can't test the Bir-

mingham-Atlanta rate by the paper rail rate from Buffalo to Albany because the movement of pig iron, if there is any movement from Buffalo to Albany is by the New York Canal. There is a great movement of pig iron over the Great Lakes route. They haven't compared the Birmingham-Atlanta rates with those rates at all.

Mr. McCollester: I will let you take Buffalo-Elmira, New York.

The Witness: I say that isn't a proper comparison. You can find rates in the North that are comparable with the Birmingham-Atlanta rate and you can find rates that are higher.

If I were going to test the relative rates on pig iron I would find out where the movement was and how the movement was On the rates on pig iron from the South the rail rates don't indicate the level because a great amount of that iron under certain conditions and at certain times moves by barge. It doesn't move by rail, so these rail paper rates don't mean anything unless you are going to test the level.

If we were going to test the level we would make a proper showing here but I don't think those are involved.

Commr. Splawn: Did I correctly state Commissioner McDonald's objective as to the ambition or purpose or desire, or whatever you call it?

The Witness: I can answer this way. I can say that [fol. 5181] between points A and B in the South, on a particular commodity, under certain conditions, a general level of rates might be departed from.

Commr. Splawn: That wasn't my question. I am sorry; my question was, did you understand the purport of the Commissioner's testimony to be that the South wants, by and large, the same rates within the South, from and to the South, all territories and all commodities?

The Witness: Generally speaking, that is true, yes, sir, and that was the reason I was going on to explain these exceptions.

Commr. Splawn: All right, that is enough. Just a moment. Do we have that kind of a case here?

The Witness: No, sir.

Commr. Splawn: How much of that is involved here?

The Witness: Well, as far as I understand the scope of the proceeding, I was somewhat confused, I think like every one was in the beginning, that these so-called percentage

rates or column rates were a part of the case but it was later held that they were not.

So far as my approach to the case is concerned it is specifically directed to the class rates governed by the classifications and my testimony dealt with it from that angle entirely.

This other expression of views about what the level should [fol. 5182] be as a whole I think is outside of this case. We will reach that at some later date, maybe.

Commr. Splawn: Now, these class rates, in working with the class rates and the scales, trying to see what would fit and whether or not there should be any changes, will all this testimony about levels and guesses as to what indices, and one thing and another, be of much assistance?

The Witness: I think not.

Commr. Splawn: To get right down to what might be of some assistance here, it was suggested, taking this part of the case that you say is before us, merely the class rates, it has been suggested that the rate in Official Territory would be acceptable all around; some witness suggested that.

The Witness: Well, I did.

Commr. Splawn: Well, would you say that the Appendix E Scales should be applied throughout all this region?

The Witness: Not as such. I was dealing more with the Index 100 rate there than I was the lower relationships to the Index 100 rate.

I realize, of course, that it is impossible to recognize, for instance, 40 per cent of 1st Class on 6th Class in the South, as against 27½ per cent of 6th Class in the North. Those have got to be reconciled some way, but if you start out with a common Index 100 rate it isn't going to be difficult to find where the other class of traffic should fall. These have got [fol. 5183] to be reconciled some way, but if you start out with a common Index 100 rate, it isn't going to be difficult to find where the other class of traffic should fall.

Commr. Splawn: Let's see if it would be so easy.

Within Official Territory do you have that perfect uniformity?

The Witness: As to class traffic, yes. You have a uniformity as to percentage relationships. There is no difference in Trunk Line, New England, or C.F.A. or I.F.A.; as compared to 1st Class rate it is all 27½ per cent of 1st Class if it moves on 6th Class.

It isn't the same condition that existed prior to the Eastern Class Rate Investigation where you had this percentage of 1st Class in different sections of Official Territory.

Commr. Splawn: Your desire then is to simplify the computation of class rates?

The Witness: On class rate traffic, yes, whatever that is.

Commr. Splawn: You are not so much interested in the application of a particular percentage?

The Witness: No.

Commr. Splawn: That is, if we find, as Mr. Jansen recommended, that the differential would still be applied to New England you wouldn't have any objection to that if it were calculated on some percentage of the appropriate [fol. 5184] classes in Official Territory.

The Witness: As a mathematical matter, no, but I do not want you to understand that I could subscribe in any way whatever to Mr. Jansen's proposals, but mathematically that, I suppose, would be all right.

Commr. Splawn: We have that problem as to whether or not New England should be on the same level with New York State.

The Witness: Certainly the Southern interests haven't any objection for New England to be placed on the same basis, but we have approached a realistic problem in this case, Mr. Commissioner, because we haven't this principle of rate-making whereby this Commission and the railroads were using these two Index 100 rates, one which was 38 per cent higher than the other, as a measuring rod for the establishment of rates on the important classes of traffic.

That is our principal concern here, is to get a common Index 100 rate thereby having it reflected in a common index level on some class of traffic that might be properly related, say 30 per cent of that, unless some unusual condition was apparent that didn't require it.

Commr. Splawn: All the existing column rates would be adjusted to it without changing the real rate at all.

The Witness: You could still make a common Index 100 rate and then adjust it so our rates would still be 100 per cent higher, I agree with that, but of course that is another [fol. 5185] mathematical calculation.

Commr. Splawn: But that isn't involved in this case.

The Witness: No, it is not.

Commr. Splawn: And it does not necessarily follow, does it, that because some plan for simplifying the publication

of class rates would be devised that your rates should be either increased or decreased as such?

The Witness: No, I think this, Mr. Commissioner, approaching it from a realistic standpoint, if you set a common Index 100 rate, for instance, just say between the points in that section of the country east of the Mississippi River governed by uniform classification, that immediately thereafter you would have a complete overhauling or revision of your so-called commodity traffic.

That followed the prescription of rates in Docket No. 13494, and in Docket——

Commr. Splawn: And in Docket No. 13535 and in Docket No. 15879. That same evolution would take place whenever this Commission, for good reason, might find that the rate structure, so far as the class rate structure, should be examined. That would be subject to conferences and negotiations between the railroad and shippers, and if they couldn't arrive at an understanding as to the level of rates on a particular class of traffic then they would have to come to this Commission and let them fix it, and in that evolution the revenues of carriers would have to be preserved and rela-[fol. 5186]-tionships would be watched by all shippers with reference to Section 3, and so forth.

The Witness: Yes, sir, I think by all means. Of course you would find, this Commission would find, if that evolution took place in the near future we will say, that the conditions that have obtained heretofore, or certainly immediately after the Commission decided the Southern Class Rate Investigation as to the composition of traffic, for instance, in the South vs. the North is entirely different and it would have something certainly new before them.

Commr. Splawn: The same law would apply to all those adjustments that apply now.

The Witness: Yes, sir, I think there would be no need to change the law.

Commr. Splawn: Then I am wondering why in this case if it is just a matter of these classes, whether it should be uniform classification, we can't get our minds on that and leave off so much speculation as to possible differences in rate levels which may or may not continue.

The Witness: Well, of course, the rate structure is always in a state of flux. I don't suppose you could saw it off at any one time and say this will stop right here now and take

a new check, but I believe this Commission could, in the [fol. 5187] light of present conditions, cast at least a new class rate structure in these territories. It is just another step in the evolution of things.

When the general class rate cases in all three territories were before the Commission we had different rate levels and sub-rate levels even of those territories.

Commr. Splawn: If we accomplish that, I want to ask you, we have not brought about this ideal equalization of all rates and levels throughout all this territory east of the Rocky Mountains, have we?

The Witness: No. If in the wisdom of this Commission you still found a rate level on a given class of commodity from the South or West or in Official Territory should be higher than in that territory you would still prescribe it, I suppose, but of course you would have to have before you sufficient evidence on which to do that with due consideration to Section 1 and Section 3 and Section 15-A.

Commr. Splawn: You would not say that there would be any implication in any finding that should be something near uniformity in classification, you would not say there would be any implication in that people's rates would logically and inevitably — changed as a result, would you?

The Witness: I don't think so.

Mr. Norman: Do you mean on other than class traffic?

Commr. Splawn: Yes.

[fol. 5188] The Witness: No, I was going to answer that in the negative if in the event you were referring to all traffic.

Commr. Splawn: Yes, that is what I was talking about. There is much talk here about all traffic and you are putting in so much time here about this rate level that I want to see if it has any significance in your mind particularly.

The Witness: It has a lot of significance, Mr. Commissioner, but I want to remind you that I didn't start this. Somebody else started it and I am trying to keep you straight about it.

Commr. Aitchison: I wonder whether or not this proceeding has as narrow a scope as the answers to Commissioner Splawn's questions would seem to indicate.

With the exception of coal and live stock and money, perhaps, and things of that sort being excepted, virtually every commodity, finds its place in the classification, does it not?

The Witness: Yes, it is in the classification problem.

Commr. Aitchison: And that is an issue we have before us.

The Witness: Yes, sir.

Commr. Aitchison: As to whether or not we can improve on the present three classifications in some way either by combining them or correcting them as they stand.

The next problem we have is the making of a class scale, is it not, from the articles so classified, which will be [fol. 5189] reasonable if applied to them, leaving of course ample room for exceptions to be made when they can be justified. Isn't that right?

The Witness: Yes, I think that is correct.

Commr. Aitchison: Is that the way you understand the issues?

The Witness: Yes.

Commr. Aitchison: Then we do have before us virtually every commodity in some form.

The Witness: So far as the level——

Commr. Aitchison (Interposing): But we are not trying out the question as to whether the existing exceptions are reasonable.

The Witness: Yet I think that may be a proper way to put it: In other words, you do have before you the existing rate level on lumber so far as it is in the classification, and I foresee under conditions we have been talking about that the uniform classification might readily adjust the rates on many classes of traffic satisfactorily to the shippers and the carriers alike and remove them from either column rates or commodity rates and put them in the classification. That is perfectly evident that a good many classes of traffic could be treated after some common Index 100 was arrived at.

Commr. Aitchison: I don't think in the prepared statement you have touched upon this matter. There has been [fol. 5190] testimony here that we have virtually achieved uniformity of classification with respect to the first three classes.

The Witness: So far as the classification itself is concerned; it is achieved.

Commr. Aitchison: And there, of course, with respect to those three classes we must give consideration to the level of the actual rates being charged upon those classes, and

then also the question as to whether there is a proper balance between those classes and the remainder of the traffic.

The Witness: You can take the largest moving class, which is 70 per cent of 1st Class; I think by far and large that is the class that moves most of the traffic certainly in the South, and between the South and the North, but you will find that there is a uniformity of classification on many of those articles. The classification is 1st Class, but the Southern carriers have reduced that rate to 3rd Class, or 70 per cent of 1st Class.

That happens to be the same as 1st Class in the North as to level, approximately the same. There may be one or two cents' difference here or there, so there you have a common level of rates on that important moving traffic.

That has already been accomplished by one set of carriers adhering to the classification proper of 1st Class and the other set of carriers reducing their rating to make them equal.

Commr. Aitchison: Do you care to express an opinion on [fol. 5191] the question which was asked this morning as to whether the Official Classification is in your judgment reasonably adapted to the commercial needs of the South.

The Witness: Well, I wouldn't admit that as such it is adapted to the needs of the South. That is due entirely to the difference in relationship of 5th and 6th Class in the two territories.

We might get to the rate level on a commodity that is covered by those classes and find that the rate level is nearer the same, but as to the classification rate level, it is much different.

Commr. Aitchison: I am talking about classification.

The Witness: If you were going to cancel the exception ratings in the South and adopt the Official Classification, I wouldn't——

Commr. Aitchison (Interposing): I haven't said that at all. I am asking whether by and large we were starting out to write a classification, leaving with the rate-maker the right, which I think everybody admits he must have, to make reasonable and necessary exceptions—in fact requires him to make reasonable and necessary exceptions—is the Official Classification reasonably adapted then, in your judgment if you care to express it, to the needs of the South:

The Witness: Well, from strictly a classification standpoint, I would say that it is.

[fol. 5192] Of course I am confronted with the problem of rate levels more than I am about the way it is stated in the classification. That is the reason I can't get away from rate levels.

For instance an article may be rated 6th Class in the North and move on 6th Class which is 27½ per cent of 1st Class. It moves in the South on 22½ per cent which is the same level, in rate level, but therefore, so far as that particular class of traffic is concerned it wouldn't make any difference to us if it were stated at 22½ per cent of Appendix E 1st Class Scale or not, it represents the same rate level, so I think by far and large that perhaps if we took Official Classification as such it would not do violence to the South.

Commr. Aitchison: We scarcely can make rates on the theory that something is going to do violence.

The Witness: Well, I expressed it that way. You apparently had something in your mind that it would perhaps——

Commr. Aitchison (Interposing): Well, yes. I have this in mind, that we are being asked here to put in one uniform classification.

The Witness: That is correct.

Commr. Aitchison: I want to find out what classification you want down South that you think is particularly adapted to your needs. It has to be uniform.

Do you want to have your Southern Classification pro-[fol. 5193] jected over adjacent territory or do you want the Official brought in or do you want the Western? You have those three.

The Witness: I would say that perhaps each one of the classifications would bear some revision and bring them together, and I think that would be necessary.

Commr. Aitchison: In other words, a new classification.

The Witness: That is correct. In other words, there would be some over-lapping there that we would have to reconcile but it is simple. It is not difficult at all.

Commr. Aitchison: Well, is it so simple that you have not felt it worth while to come to us with any suggestions as to what that classification should be?

The Witness: I haven't thought it was too difficult. Certainly we were not prepared at the time this case was

set for hearing to go into the full classification. We were not prepared to do it. We were not equipped.

Commr. Aitchison: The principles of the classification have been stressed from the beginning. We have had witnesses here representing the three classification lines who have attempted to tell us what the principles were underlying their classifications.

The Witness: They were all historical.

Commr. Aitchison: Well, historical or not, they are the principles that exist, according to the witnesses at the present time.

[fol. 5194] Have you got any sort of principles you think we ought to apply that you can give to us?

The Witness: No; if I had the time I think I could suggest the uniformity of classification in the three territories that probably would be satisfactory.

Commr. Splawn: And how many years do you say you have been working on this?

The Witness: I am probably not being tried for being dilatory in trying to get up a new classification, but still I am not talking about the physical efforts that might necessarily be required to put it together. I am talking about the mental efforts, so to speak. Of course it is going to take some time.

Commr. Aitchison: You are going to be asked, when you come to write your brief, to give us suggested findings. When it comes to a matter of uniform classification I take it from what has been testified here you are going to urge that.

The Witness: Naturally.

Commr. Aitchison: What kind of uniform classification? On what principle should that classification be constructed?

The Witness: I will admit so far as my own interests are concerned that the record certainly isn't clear as to what it should be.

It may be that we will have time between now and brief date to give you something. We discussed that at some [fol. 5195] length between us and it was found impracticable, I will put it, at this period to work out a uniform classification. Although we might have ideas as to how it should be done, we didn't have the means with which to do it.

Commr. Aitchison: Yet it is being suggested that this Commission should do it in nine months.

The Witness: No. I would think perhaps this Commission should admonish the parties to get together and agree on a classification. I don't think we would have much trouble. I mean if you meant business. I don't mean just take it as you did in the beginning and the Commission set out as soon as it was organized in 1887 and got after these railroads about uniform classification, and it got hotter and hotter until about 1914 and then the Commission quit and they just couldn't get the railroads to get together.

There was a difference of opinion of the railroad classification people, such as our friend, Mr. Fyfe, and those old fellows, and they just wouldn't get together and you couldn't get them together today and they are not going to agree, but if they had a mandate from this Commission to get together and make one, or you would make it, they would make it.

Mr. McCollester: Do you think there is such authority in the law?

The Witness: No, I don't think so, but I think this Commission could prescribe a uniform classification if it desired [fol. 5196] to do so.

Commr. Aitchison: I thought you had some evidence on that.

The Witness: We will try to give you something in brief on it. I didn't have any set principles that I would like to——

Commr. McConnaughey (Interposing): You suggest combining the classification of the three territories to come out with one which you suggest would be operatable. Would that have the effect of changing the rate level in any one of those three territories from what it is today?

The Witness: It might change the rate level on some particular class of traffic and that change might be perfectly acceptable to both the railroads and the shippers; I don't know. It is conceivable that change, whether it be up or down, might be satisfactory to all parties.

Mr. McCollester: It would be up if it was different from Official Territory.

The Witness: Yes, if it moved on the classification basis in Official Territory.

I am sorry, Mr. Chairman, I am not prepared at the moment without consulting with my other people to commit myself regarding any set formula, but I will.

Commr. Aitchison: I just want to say this. Mr. Hart, you are here as an individual witness giving us your best [fol. 5197] independent judgment on any of these questions as an expert, and it was in that capacity that I asked you if you had any views with respect to classification that you cared to express. I don't care to press you for your views if you think they are immature.

The Witness: Well, they are to a certain degree.

Chmn. Alldredge: I am afraid I might start another discussion on this, but if the uniformity is attempted do you think that more difficulty would be encountered on the classes below 4th than above 4th?

The Witness: Undoubtedly.

Chmn. Alldredge: Do you think if you approached it from that standpoint that it would be an easier task—I see some smiling back there, I suppose that maybe some of the rest of them are prepared later to give us better suggestions—but if you attempted it do you think you could more readily reach the reconciliation between the three separate classifications now with respect to the classes from 4th and above than you could below 4th?

The Witness: Undoubtedly, because those classes today are practically uniform.

Commr. Aitchison: Is 4th?

The Witness: I know of course that 4th Class in the North is 50 per cent of 1st Class and it is 55 per cent in the other territories but in discussing these things I approach [fol. 5198] it from the standpoint of rate levels rather than just figures in the classification.

Chmn. Alldredge: Isn't it a fact that so far as less than carload traffic is concerned there is virtual uniformity?

The Witness: Yes.

Commr. Aitchison: Thanks very much. We have interrupted you, but if you will continue with your statement.

The Witness: I doubt if it has been of very much benefit to you. I am sorry I couldn't give you a full formula.

Mr. Bell in his concluding remarks concerning his Exhibit No. 167 appears to be critical of the general position of the shippers throughout the country who have testified in this case in favor of a uniform classification. In my opinion the historical development of our present classification should be looked into to see what, if any, consideration was given to the efforts of this Commission to bring about a uniform classification in the past.

In his Exhibit No. 168, Mr. Bell presents a purely academic comparison to show the result of substituting the Official Classification proper on traffic rated 3rd Class and lower and the Appendix E. Docket No. 15879 Class Rate Scale in Southern Territory for the Southern Classification proper rating on the same classes of traffic applied to the Southern K-2 Class Rate Scale, Docket No. 13494.

Likewise, he reverses the comparison by substituting in [fol. 5199] Official Territory the present Southern Classification ratings and the K-2 Class Rate Scale, although the caption on the last six columns shown in Section A of this exhibit is not entirely clear in this respect. The theoretical comparisons assume a one dollar 1st Class rate in Official Territory and a $1.38 1st Class rate in Southern Territory.

If all traffic included in the comparisons moved on the Classification proper ratings shown therein, then perhaps the comparisons would be of probative value. I agree with the evidence which I have heard introduced by both shipper and railroad witnesses in this case that the classification proper ratings in both territories are used in the breach rather than in the observance.

Witness Morris, at the Columbus hearing, referred to the relative heavy north-bound tonnage of Manufactures and Miscellaneous commodities included in Group V of the Commission's Freight Commodity Statistics.

To me the figures he gives indicate that this group comprised a rather large percentage of the total north-bound tonnage when coal is omitted. However, Mr. Morris failed to submit the consist of this tonnage so the Commission might know what portion of it actually consisted of raw materials such as: Molasses, Blackstrap; Pig Iron; Aluminum, i-got or pig; Vegetable Oils; Woodpulp; Scrap Metals; Scrap Iron; and so forth. Included in this group [fol. 5200] also are numerous commodities considered semi-raw materials, which have been processed to some degree in the South, but are further processed into finished commodities in the North.

Such group includes: Rough Textiles; Alcohol; Chemicals; Aluminum; Vegetable Oils (Refined); Paper; printing; Fertilizers, NOS; Alloys; Sugar, and so forth. The commodities I have mentioned are not all of the raw materials or semi-raw materials that move from the South to Official Territory included in the Manufactures and Miscellaneous Group.

I consider statements of this character should be further broken down to show to what extent the rates on these materials into Official Territory from the South are relatively lower than within the South. Likewise, it should be borne in mind that included in this group of commodities, for instance, is Cast Iron Pipe, a very heavy moving commodity from the South on which a common rate level applies east of the Mississippi River.

There are other manufactured commodities included in this group which are manufactured to the degree for consumer use, on which the rates are but slightly higher than the level of rates applying on the same commodities in Official Territory.

In Section 1 of Witness Morris' Exhibit No. 180, sheets 1 to 33, inclusive, he undertakes to show the effect, as far as rates are concerned, of applying the Official Territory [fol. 5201] rate level under the Official Classification ratings proper, or exceptions thereto, in the different classes of traffic listed in this section, although not claiming that there is an actual movement of same from Atlanta, Ga.

While the showing is, of course, more or less academic, nevertheless, because Mr. Morris stated that he considered this section of his exhibit the most important part of it, and because his explanation of it on pages 4037, 4038 and 4039 of the record, does not make it clear that the rates shown as "Present Rates" were or were not intended to represent the actual published rate—although this would certainly be inferred from his explanation of the exhibit beginning at page 4039 of the record—I believe it is important that I point out the fact that the rates shown under the column headed "Present Rates" from Atlanta are not, in numerous instances, the actual rates, but rather represent the column ratings provided on such traffic in exceptions to the classification.

While I have not made a detailed check of the exhibit for the purpose of verifying its correctness in every respect, nevertheless, a casual examination of it discloses discrepancies in the present rates on commodities produced and shipped from Atlanta, Ga.

For instance, Line 17, Sheet 2, shows the rates on Agricultural Implements, carload, from Atlanta to Louisville as 61 cents. The applicable rate is 49½ cents.

[fol. 5202] Line 10, Sheet 5, the rate on coal and wood stoves, carload, from Atlanta to Louisville, is 33 cents. The rate shown to Chicago is also incorrect.

The rates on Stone, beginning at Line 34, Sheet 20, are incorrect. For instance, the rate to Louisville on Dressed Stone is 32 cents, and to Chicago 42 cents.

On Line 18, Sheet 23, rates on Leather from Atlanta to Chicago are on the basis of 30 per cent of 1st Class rather than 37½ per cent.

Sheet No. 23, lines 8 and 10, Pig Lead or Slab and Sheet Lead, the rate is 42 cents to Louisville, and not 50 cents.

Sheet 24, Line 32, Packing House Products to Louisville, the rate is 51 cents and not 57 cents.

Sheet 26, Line 33, Excelsior Packing Mats, the rate is 37 cents and not 66 cents.

On Sheet 2, Lines 33 to 37, inclusive, are shown rates on alloys for steel manufacture. While these alloys are not manufactured in Atlanta, they are produced in volume at other points in the South, such as Charleston, S. C., and the Alabama steel district; but as Atlanta, Ga., is used to illustrate the point Mr. Morris is making, it should be noted in this instance that the Official Territory exceptions ratings on Ferro-Phosphorus (Line 34), Ferro-Silicon (Line 35) and Silico-Manganese (Line 37) is 27½ per cent of 1st Class.

[fol. 5203] However, Mr. Morris no doubt knows, the first two alloys mentioned above move within Official Territory on rates the same as on billets and very much lower than 27½ per cent of 1st class.

There are other instances of this character that could be pointed out. However, I have selected this one because it is an important commodity produced in the South; and the showing which Mr. Morris has made with respect to the rates on these steel alloys is so impressive as to raise in my mind the question whether the facts are correctly stated in the exhibit, in the event it is supposed to include a comparison of the present rates on the different classes of traffic shown in this section of the exhibit. Naturally, these differences would very materially affect the summary shown on Sheet 24.

However, I am inclined to believe that Mr. Morris did not intend for the exhibit to show the actual rates in effect on the different classes of traffic covered by this section of

his exhibit to the extent that they were different from the rates that would result by applying the published exceptions to the classification. If this was his intention, naturally, it can be cleared up by him; but even this would not take care of the discrepancy pointed out with respect to the rates on steel alloys.

Likewise, in instances wherein the traffic actually moves on exceptions ratings, the competitive rate situation at the [fol. 5204] Ohio River or at Chicago is not disclosed with respect to commodities that actually move from Atlanta, nor the manner in which they move.

For instance, on lines 32 and 33 on Sheet 5, he shows the carload rates and ratings on Shoes. While there is a limited carload movement of Shoes from Atlanta, there is no carload movement to Louisville, the movement being entirely in less carload quantities.

Therefore the correct competitive situation at Louisville would be a comparison of the less carload rate from Atlanta, i. e., 116 cents, and the Official Territory rate level, which would be 117 cents per 100 pounds.

Even the carload basis of 4th Class from Atlanta to Louisville does not place the Atlanta manufacturer on a relative competitive basis with Endicott, N. Y., the principal source of competition, because the rates from the latter point on Shoes, carload, to Louisville, Ky., are not on the full Official Territory Classification basis. The rate from Endicott to Louisville is 99 cents per 100 pounds, for a distance of 727 miles, whereas the classification basis is 124 cents.

In any event, the reduction in the Southern Classification basis of 2nd Class on Shoes, carload, to 4th Class by exception, was made necessary by virtue of a reduction made by the Southern carriers on Shoes, less carload, from 1st to 3rd Class, effective September 1, 1940, along with many [fol. 5205] other reductions similar in nature that were made on that date.

On Sheet 11, Lines 1 to 9, carload ratings are shown on Clothing, NOIBN, which is rated 2nd Class, carload, and 1st Class, less carload, in Official and Southern Classifications. By exception, it is rated 70 per cent of 1st Class in Southern Territory, carload and less carload.

However, the movement from Atlanta is altogether in less carload quantities; and this holds pretty well true throughout the country. Therefore, the actual competitive

relationship at Louisville would show the Official Territory rates as being 117 cents and not 99 cents. Consequently, the reduction shown in the Atlanta rate from 116 cents to 99 cents is purely a paper one. The same situation is true with respect to Games or Toys, viz; Dolls, Line 26, page 18.

On Sheet 28, beginning with Line 6, a number of Paper Articles are listed that are manufactured in large quantities in Atlanta, Ga., but the movement is entirely less carload on rates that approximate the Official Territory level; and on some of the items they are the same as the carload rates shown on this sheet.

I refer particularly to binders or covers, paper or pulpboard; envelopes; pads; tablets or blank books; school blanks or forms; papeteries; and paper tags. Additionally, exceptions ratings on school blanks or forms, carload, in Official Territory, should be shown as 27½ per cent of 1st [fol. 5206] Class.

To the extent that this section shows actual rates applied on commodities manufactured in Atlanta that are in competition with similar commodities manufactured in Official Territory, it portrays the disadvantage as to transportation cost of the Atlanta manufacturer at such a point as Louisville, Ky., when meeting competition with manufacturers located in Official Territory.

The Exhibit also brings out forcefully the fact that most of the traffic moves within the framework of the class rate structure, by virtue of rates being definitely related to the governing 1st Class 100 rates, and further confirms our position concerning the importance of the 1st Class 100 rates. Also it brings us again to the matter of the proper term to apply to this type of rate, i. e., whether it should be referred to as a class rate or a commodity rate.

It would seem that Witness Morris has finally concluded that perhaps at least the carload rates, although definitely related to the governing 1st Class rate—particularly when they are published as exceptions to the Classification proper —should be designated as commodity rates, although his explanation in this respect, at pages 4051 and 4032 of the record, is not very convincing to me as a rate man. He does not explain why he selects a rating on one class of traffic published in the Southern exceptions along with [fol. 5207] ratings on other classes of traffic, and describes one as a commodity rate and the other as a class rate.

For instance, in response to a question by Mr. Norman, he states, that the reduction made on many classes of traffic effective September 1, 1940, and published in exceptions to the Classification, properly should be considered within the class rate structure, but he includes some of the carload reductions made on this date in Section 1 of his Exhibit No. 180, and treats them as commodity rates.

Probably, after all, it is not material what they are called, except if this could be definitely determined, the Commission and directly affected parties would be less confused when considering rates of this character.

However, their status is fairly detailed on pages 1 to 30 of his Exhibit No. 15, introduced at the Indianapolis hearing; and I prefer to rely on that showing, which, in general, coincides with the information contained in my exhibits Nos. 88 and 90.

But regardless of how these rates are designated, their measure is often controlled by the 1st Class rates operated in the different rate territories. Certainly this is true with respect to rates within the South and between the South and Official Territory; and it is this condition that we are complaining about, because this Commission has recognized that the difference of 38 per cent between the South-[fol. 5208] ern 1st Class level prescribed by it in Southern Class Rate Investigation, and the 1st Class rate level prescribed by it in Eastern Class Rate Investigation, is not warranted.

At page 3977 of the record, Mr. Crane refers to the revenue test made in the Southern-Official Divisions Case, Docket No. 24160, wherein revenue derived from inter-territorial traffic between Southern and Official Territories were tested by rates in effect prior and subsequent to the effective date of rates prescribed in Southern Class Rate Investigation.

Certainly this test does not support the contention he makes concerning the revenue result of the rates prescribed on inter-territorial traffic at the time of the Commission's decision in the Southern Class Rate Case, because the Division Case included many elements not present at the time the Southern class rates became effective, January 15, 1928.

My point was that in the Southern Class Rate Case the numbered classes, particularly the 1st Class 100 rates were made higher than they would otherwise have been, but for

the inter-territorial structure that supplanted the prior combination basis between most of Official Territory and the South.

This conclusion is not only supported by the report of the Commission in the Southern Class Rate Case, but by its later expressions and particularly those of Commissioner [fol. 5209] Eastman who had direct charge of the case. Certainly it should not present an enigma to anyone who was intimately associated with the readjustment in the Southern rates following the Commission's decision in the Southern Class Rate Investigation, and bearing in mind the character of the Southern rate structure at that time, coupled with considerations of the carriers' revenues, which I have previously referred to.

Mr. Crane, at pages 3985 and 3986 of the record, treats very lightly the seriousness of the situation confronting Southern manufacturers in competing for business in important consuming areas of the South by virtue of the relatively lower class rates prescribed in the Southern Class Rate Case from Official Territory origins than from Southern origins to the same consuming area, which situation was subsequently aggravated by the Commission's action in further reducing the class rates from Official Territory origins in the so-termed Border Cases.

Apparently, he endeavored to excuse his own railroad and the Southern carriers generally from being a party to the charge of prejudice against Southern manufacturers, by referring to a statement of the Commission appearing at page 575 of the Third Supplemental Report of the Commission in Southern Class Rate Investigation to the effect that:

> "* * * while the Southern carriers have made a point of this situation in their petition dated April 30, [fol. 5210] 1927, * * * nevertheless, the Atlanta Freight Bureau, in a petition filed in answer to the carriers' petition, made no point of the situation."

I expected the Southern carriers to refer to this statement by the Commission; but had Mr. Crane reviewed his files he would, possibly, have been enlightened about the matter, because there was an understanding with the Southern carriers at the time of preparation of the April 30, 1927, petition that we were in agreement with them as to certain

points raised in the petition—particularly point No. 5 which dealt with this situation—and therefore our answer was directed only to such points as were in controversy.

The Commission was well informed about the position of the Atlanta Freight Bureau and other Southern shipping interests concerning this point. It was discussed at length by the Commission in its First Supplemental Report in Southern Class Rate Investigation, and is referred to in detail on page 7 of my Exhibit No. 90. Specifically, our position—and that of other shippers located in what is referred to as the Deep South—is stated on page 323 of that report.

This competitive situation however could be cured by the establishment of commodity rates from the Southern origins to so-called Border Territory; but this has never been done.

This situation has been corrected by the observance of the fourth section at intermediate points in Border Terri- [fol. 5211] tory by applying rates established from Southern manufacturing points to the Ohio River and Virginia cities.

To the extent that this has been done on a very limited number of commodities produced in the Deep South it has had the effect of minimizing the preference accorded the Official Territory manufacturers of similar commodities; but Mr. Crane's statement in this respect is inaccurate, for rates on numerous commodities produced in the Deep South are not accorded rates to the Ohio River and Virginia cities on a competitive basis with rates applying on the same commodities in Official Territory.

In so far as the Atlanta shippers are concerned, we have consistently complained to the Southern carriers about this situation since the inter-territorial rates became effective, pursuant to the Commission's report in Southern Class Rate Investigation, and particularly after the situation became more acute because of the practice of constructing rates on most commodities with definite relation to the governing 1st Class rates, coupled with the further reductions in the 1st Class rates from Official Territory to the Southern Border Territory.

I can say with assurance that on every occasion wherein the Southern carriers have proposed to establish rates on commodities related to 1st Class from Official Territory origins to points in Southern Territory, which were rel-

[fol. 5212] atively less, distance considered, than from Atlanta, I have strenuously objected to such proposals, unless they were relatively adjusted, distance considered, from both origins.

Mr. Crane in testifying for the Southern carriers seemed to convey the impression that perhaps the discrimination that I claimed existed with respect to the relationship between the 1st Class rates prescribed inter-territorially between Official and Southern Territories with the 1st Class rates prescribed in the South, in the Southern Class Rate Investigation and the different classes of traffic that were related to those 1st Class rates by the same percentage, probably did not appear as acute as it might seem to be from my testimony, and I did want to make this one further observation concerning that condition, that it reached such a point that so far as Atlanta is concerned we notified two carriers that if they attempted to publish any further rates from Official Territory to Southern Border Territory on the same percentage of the Border cases, 1st Class rate that obtained within the South, that we would necessarily be compelled to contest that before the Commission, and to bear that position out, the first time that was done it involved the rates on certain paper articles that were manufactured in Atlanta, wherein the Southern carriers proceeded to establish rates from St. Louis based on the same percentage of 1st Class that had been established from Atlanta and certain other fabricating points.

[fols. 5213-5214] Those tariffs were filed to become effective on July 25, 1941.

I filed a petition with this Commission seeking suspension of those rates and after the petition was filed the Southern carriers agreed to place those rates on a percentage of the Docket 13494 rates rather than the Docket 21665 rates.

No further attempt since that case was closed has been made to unduly prefer these Northern manufactures.

I thought it was pertinent to this record to show our position with respect to that situation.

Of course, it is perfectly obvious that this situation is not entirely confined to competition between Southern and Official Territory producers of similar commodities in Southern Border Territory, because it likewise causes undue prejudice as between producers of the same commodities located in Southern and Official Territories, when competing

for business in Official Territory, particularly in instances wherein the rates are constructed on the percentage of 1st Class formula, whether they be standard percentages or otherwise. I think one illustration of this will suffice.

Further reference to this discriminatory situation in the so-called Border Territory, I want to illustrate that further by selecting the rates on cotton clothing that is manufactured both in the South and in Official Territory.

For this comparison I have selected Chicago as a des-[fol. 5215] tination and Macon, Ga., Greensboro, N. C., and Philadelphia, Pa., as representative manufacturing points of so-called work clothing.

The distance from Macon to Chicago is 817 miles; from Greensboro 808 miles; and from Philadelphia 814 miles. There you have a comparable distance from two Southern manufacturing points and one official territory manufacturing point to Chicago.

The rate from Macon is $1.56; from Greensboro $1.25 and from Philadelphia $1.12.

The lines serving the two Southern origins are the same and certainly there is nothing so far as I know in transportation conditions to warrant those rates being that much different.

That I think illustrates the point that we are particularly complaining about, and which comes about by prescriptions of this Commission wherein the 1st Class Index 100 rate is relatively less from one origin in the South than from another origin.

Commr. Splawn: That was what I was asking a while ago. Would mere uniform classification necessarily change that?

The Witness: Yes, sir, if you had uniform 1st Class rates. The rates on this clothing on this data are rated 70 per cent of 1st Class in the two territories and if you had that common Index 100 rate your rate to Chicago [fol. 5216] would be the same as from Philadelphia $1.12 from all three points competing in Chicago for an equal distance.

Commr. Splawn: That is if there were a uniform rating it would be uniform.

The Witness: It is. It is a uniform rating today, but the only reason why Macon, Ga., pays this greater difference

is because of the Index 100 that this Commission prescribed.

Commr. Splawn: Isn't there probably something more fundamental than that?

The Witness: I don't think so, not in this case. There is nothing fundamental about it except that on work clothing the Southern carriers decided to put — in 3rd Class or 70 per cent of 1st Class. The Northern carriers maintained a level of 1st Class.

The complaint was brought before this Commission and it found the rates should be 70 per cent the same as in the South, so there you made the rates the same, I mean the percentage the same.

Commr. Splawn: The percentage the same but did not make the rates the same.

The Witness: No, but you didn't consider that in those cases at all and by virtue of doing that then you cause the man at these Southern points to pay a higher rate, mile for mile, than does his competitor at Philadelphia, whereas before that he was on an equal basis. You took that away from him.

[fol. 5217] Commr. Splawn: The Commission fixes relationships?

The Witness: Of course that wasn't involved in the Northern case on work clothing. They merely brought a case under Section 1, and you held under Section 1 a reasonable rate level on work clothing was 3rd Class rather than 1st Class. When you did that, that automatically increased the disadvantage of the Southern producer; whereas it had been equal before you created a difference of 138 per cent.

Commr. Aitchison: Was he in that case as an intervener?

The Witness: No, sir, he was not because I don't suppose the Southern manufacturers had advice about the case at all.

Commr. Aitchison: Was that point raised before the Commission?

The Witness: I think not, sir. That is in effect today. You automatically took a competitive basis away from us by that action, and that is what we are talking about here is about this control of these rate levels by the Index 100 rate.

Commr. Aitchison: If it violates Section 3 of the Act it seems to me there is a remedy.

The Witness: Yes, I agree with that. I was merely using that as an illustration to show this Commission why we are complaining about those Index 100 rates.

Commr. Aitchison: As long as we recognize the right [fol. 5218] and probably even the duty, of the carriers to make exceptions when required and their right to make exceptions within that proper sphere of managerial discretion, is there any way to maintain uniformity of rates between the two territories or even within a territory except by the prescription of minimum rates.

The Witness: I think under Section 3 the Commission can do that unless there was some competent evidence to the contrary.

Commr. Aitchison: Would you advocate as a part of our findings in respect of an attempt to get uniformity in class scales that we should make a condition similar to condition 27, I think it is, in the Consolidated Southwestern?

The Witness: I have said that. I don't think I have ever made an effort to have rates established into the Southwest that I was not confronted with that finding 27, whether it was real or not, but I am convinced as a last resort that I would rather take that than what I have got and work under it. It is bad, I agree with you.

By Mr. Norman:

Q. Mr. Hart, if you had a uniform scale, a uniform classification, if there were special conditions and circumstances which justified the departure as to certain traffic in certain sections could not that be handled with suspension proceedings if the carriers exercised their managerial judgment and published them, if they could justify them they [fol. 5219] could become effective, whereas if they couldn't justify them as being non-discriminatory they wouldn't.

A. That sort of plan was followed out in the Consolidated Southwestern cases by virtue of I & S Docket 3103.

Q. Isn't that sort of situation very much preferable to the old way?

A. Yes, but I expressed the view to the Chairman that if that was the only means by which we could secure what we wanted I would take it rather than what I had, and try to work under it.

It is a fact as testified by Witness Morris appearing for the Southern railroads, that the class rates prescribed

by the Commission in Southern Class Rate Investigation and subsequent Border cases were not those the Southern railroads advocated (Page 18, Exhibit No. 15).

This prejudicial situation is one that is clearly unjustified; and we are insistent that the Commission correct it.

Mr. Crane, in discussing pages 11 and 12 of my Exhibit No. 90 (Record, pages 3987 and 3988), again loses sight of the point I was making, which was primarily directed to the controlling influence of the 1st Class 100 rate in constructing rates on various classes of traffic related to the 1sf Class rates, which we reiterate disregards conditions that necessarily should be considered when changing the general level of rates on a given class of traffic. [fol. 5220]. I am glad he referred to the Southern Textile Case to support his statement in this respect, because it really illustrates and supports my statement of which he is so critical.

In the Textile Case the Commission prescribed a percentage of the governing 1st Class 100 rates on piece goods from the South to Official Territory.

Subsequently the Southern and Southwestern rail carriers found it necessary to re-establish the prior parity of rates with New England at Chicago. This caused a wide origin blanket in the South—in fact, one more extensive than had previously existed. This blanket is shown on a Map Exhibit No. A-183, which I introduced in the reopened Southern Textile Case.

Because of the observance of the 4th Section, the Chicago rate also causes a substantial destination blanket.

On pages 3999 to 4001 of the record, Mr. Crane discusses Section III-B of my Exhibit No. 88. He seems to criticize the manner in which I arrived at the approximate rate levels, although he offers no better way to arrive at them, merely contenting himself with the abstract statement that this method of comparing the rate levels is incorrect, because the 1st Class rates from the South to CFA and IFA territories will not average as high as the 1st Class rates under the Southern Territory 1st Class scale; but [fol. 5221] he offered nothing in evidence to support his conclusions although he attempts to illustrate the point by selecting a commodity which is produced in Memphis, Tenn., rated Class 30, or 30 per cent of 1st Class, as compared with Class 35 rating in Official Territory.

Of course the 1st Class rates from Memphis, Tenn., to this section of Official Territory are lower than if the full K-2 1st Class scale were applied from Memphis; but, on the other hand, if the 1st Class rates from Jacksonville, Fla., were selected, it would be found that they exceed somewhat the full K-2 Southern 1st Class scale. True, the particular commodity to which he refers, i.e., acetic acid, is not at the present time produced in Jacksonville, Fla., but it is the preferential character of the governing 1st Class 100 rate that causes the rate on a given commodity from Memphis, Tenn., to Detroit, Mich., to be made lower, relatively, than the rate on the same commodity from Jacksonville, Fla., and that is what we are complaining about.

The East Tennessee Section is a potential producing area of this commodity. If the 1st Class rate from Knoxville to Detroit is compared with the 1st Class rate from Memphis in relation to the K-2 1st Class Scale, it will be found that the present Knoxville 1st Class rate is 7 cents less than the scale, whereas the Memphis 1st Class rate is 22 cents less than the scale.

Mr. Crane fails to explain what conditions in his opinion [fol. 5222] warrant the Southern Railway, for instance, serving both Memphis and Knoxville, charging the Knoxville producer of a commodity rated Class 30 higher relative rates than a Memphis producer. These comparisons of the 1st Class rates with the K-2 1st Class Scale, and others similar in character, are shown on Sheet 3, Section II, of my Exhibit No. 88.

On page 44 of his Exhibit No. 152 Mr. Rive purports to test the relative rate level on lumber, carload, in Official and Southern Territories.

There are shown opposite certain mileage blocks on this exhibit the percentage that the Southern Territory rates represent of the Official Territory rates. There is nothing on the exhibit, nor can I find anything in Mr. Rive's testimony, that would indicate just what those percentages represented.

I do find, though, on testing the exhibit that it represents that cumulative rates at 100 miles in each territory, for instance, and the percentage that those cumulative rates bear to one another.

In other words, at 300 miles he merely takes the cumulative rates at the Southern scale from 1 to 300 miles and

finds a total and performs the same operation with Official Territory Scale and then relates the two cumulative results to show this percentage, which I believe would be unfair and does not test the rate level by any means on this [fol. 5223] particular commodity.

So that the Commission might know the exact difference between the two levels at these mileage blocks I have prepared a study shown in Table A, Sheet 2, of my Exhibit No. 220.

There you have an exact percentage relationship of the two scales at those distances.

I am not claiming that the difference shown in this table here represents the actual difference in the level of the rates on lumber without first having before me an accurate traffic test to show how this lumber moved in both of the territories.

For instance, there is quite a substantial movement in the South for longer distances, and this was questioned at the Indianapolis hearing when I submitted my exhibit for the purpose of comparing the rate pattern and not the rate level on lumber, and someone questioned the fact that there were no distances in Southern Territory of 900 miles and in this connection I call your attention to Sheet 3 of my exhibit wherein I have selected important lumber producing points in the South and important lumber consuming points in the furniture district in North Carolina.

You will observe there that those distances are quite long and there is a very substantial movement from the Mississippi Valley and Memphis particularly, to this Carolina [fol. 5224] furniture district, so if you test the rate levels at these longer distances you will find that the Southern scale is not related to the Northern scale, as Mr. Rive would have you understand it by Sheet 44 in his Exhibit No. 152.

On Sheet 46 of his Exhibit No. 152 Mr. Rive makes a similar comparison of the rates on scrap iron, and I have shown in Table B, Sheet 2, of my exhibit just what the rates are at the actual mileage breaks shown on the exhibit.

Mr. Rive in making his comparisons on Sheet 46 uses the same formula that he used with respect to lumber. In other words he takes the cumulative rates for those distances and adds them together and finds a relationship, which of course is not correct.

Further, Mr. Rive's figures were taken from my Exhibit No. 88 submitted at the Indianapolis hearing, which was,

so far as the rates on scrap are concerned, in error and Mr. Bell detected that error and corrected it in his exhibit that he filed later on in Columbus, so Mr. Rive's exhibit is found in error to that extent.

I believe Mr. Widell at the Columbus hearing referred to rates on one particular commodity—I believe it was Anti-Freeze—on which the rates were apparently properly adjusted immediately upon the matter being called to the attention of the railroads, from Nashville, Tenn., to destination in the South and Official Territory.

[fol. 5225] Upon returning home I checked on this matter and find that Mr. Widell is correct, that certain rate adjustments were made in the rates on a compound produced in Nashville, Tenn., and described as Anti-Freezing Compounds Liquid.

Those rates were established representing a level of about 120 per cent of the Northern level. Whether or not those rates were satisfactory to this particular Nashville producer I am unable to say but it is a fact that the rates were not established on the Official Territory level.

There is just one other observation, Mr. Chairman, I would like to make in connection with this scrap iron situation.

Of course Mr. Bell and Mr. Rive compare the Southern and the Northern level but I don't think it should be overlooked that in the Southern States particularly we have rate levels on scrap iron that are not the same as the interstate level; for instance the rates in Alabama are higher than the interstate rates, and wherever there is a movement they reduce the rates to the interstate basis, and we have rates in Georgia that are lower than the interstate basis so that paper comparison doesn't mean anything when it comes to an actual weighted rate level on scrap iron.

I want to refer briefly to the testimony of Messrs. Oliver and Tilford introduced on behalf of the Southern carriers—particularly the former—beginning on page 3802 of the [fol. 5226] record, particularly with reference to northbound competitive rates from the South, as this testimony could easily be construed to convey the impression that "all is well," so to speak, and that the Southern shippers generally are satisfied with the present class rate situation, and that a Southern processor, whatever his product, has no difficulty in securing satisfactory rates into official territory, and that even if this cannot be accomplished in the first instance

by voluntary action, he would have little difficulty in securing the rates desired by an appeal to this Commission, because of some principle announced in its decision in the so-termed "Southern Governors' Commodity Rate Case"—Docket No. 27748.

He correctly states that no one has pressed a formal complaint before the Commission covering rates on Southern processed commodities into Official Territory since the decision in that case, but he is incorrect in assuming the reason for this is because no Southern shipper is dissatisfied with his rates to Official Territory.

There are now two inter-territorial cases pending, one covering textiles, which has been heard in a reopened hearing proceeding, and the other covering packing house products, and so forth, which has not been heard. However, this does not mean that numerous Southern shippers desiring to market their products, or who may now be marketing them in a limited way, in Official Territory, are satisfied with the rates charged on their products, because of compe- [fol. 5227] tition which they meet in that territory.

I believe it would be correct to say that a good number of such shippers are awaiting the outcome of this case before proceeding in this manner. I know that in some instances the industry does not feel that the expense incident to the prosecution of a case before the Commission is warranted.

True that when a Southern processor can prove to the satisfaction of the Southern carriers that there is a need for rates into Official Territory to meet competition, they are generally willing to suggest them to the Official Territory lines. (Tilford, p. 3889). But the matter then usually reaches a stalemate.

With but few exceptions, agreement on the part of the Official territory carriers in rates equal to those applied on the same classes of traffic in that territory is confined to either raw or semi-raw materials that are to be further processed in Official Territory. Mr. Oliver mentions some of them, such as:

Rayon, Aluminum Products, Cast Iron Pipe, Tobacco, Furniture, Textiles, Alloys (Steel), Wood Pulp, Papers and Board.

Of the completely processed articles, i.e., furniture, tobacco, some types of textiles and certain papers, the inter-territorial rates, generally, are higher than are the rates in

[fol. 5228] Official Territory. On cast iron pipe there is a common rate level east of the Mississippi River which was fixed by the Commission.

The other major commodities he mentions, i.e., alloys, wood pulp, aluminum products, pulpboard and particular types of textiles, are in the nature of semi-raw materials, that are shipped in volume into the North for further processing.

The carload rates on rayon yarn, which represents the principal movement of rayon products from the South to the North, and which is produced at the large operations mentioned by Mr. Oliver as being located in western North Carolina and northern Georgia are on a level slightly higher than those applying in Official Territory.

The rates on aluminum products, such as bar, plate, sheet, and so forth, from Alcoa, Tenn., to Official Territory, established for the Aluminum Company of America, approximate the Official Territory level. Similar rates were established from Listerhill, Ala., for the recently constructed Reynolds Metals Company plant, except that the rates from the latter point to some of the principal consuming points in Official Territory are less, distance considered, than if the Official Territory level were applied.

The present rates on wood pulp from the Southern pulp mills, to the extent that through rates are published, are comparable with rates on this commodity within Official Territory. A revised general adjustment has been agreed upon with respect to this commodity, wherein the Official Terri- [fol. 5229] tory level is to be established to the border cities and north thereof, i.e., 22½ per cent of the Appendix E 1st Class Scale; and within Southern Territory the level is to be made 17½ per cent of the K-2 1st Class Scale, and represents a rate level approximately 10 per cent higher than the Official Territory level. On alloys, specific rates are published from Southern producing points to specific destinations in the North that are comparable with the rates in the North.

There is another important new production of semi-raw material in the South, although it was not mentioned by Mr. Oliver. That is synthetic rubber. Rates have been approved for publication into Official Territory on the Official Territory level. It is significant to know that the rates on processed rubber articles, such as tires, from the South-

ern manufacturing points to Official Territory are very much higher than the rates in that territory.

The commodities referred to by Mr. Oliver, on which rates have been voluntarily established, and are as low as, or only a little higher than, the rates in Official Territory, are strictly raw materials or materials that are to be further processed.

Mr. Oliver also mentions harness and saddlery and certain classes of machinery. The north-bound rates on these finished products are, of course, higher than the Official Terri-
[fol. 5230] tory level and are shown on Sheets 4 and 5, Section III-B of my Exhibit No. 88. Naturally, readjustments in inter-territorial rates from the South to the North on different classes of traffic are taking place all along, but they represent rates which are, distance considered, higher than are the rates on the same classes of traffic in Official Territory. Whether these rates are in all instances satisfactory to the Southern producers, I am not prepared to say, except I will say that the rates on a good many of the commodities processed in Atlanta, which have actual or potential markets in Official Territory, are not satisfactory. I should like to refer to a few of them.

In making that statement I had in mind submitting to this Commission certain factual evidence as to the manufacture of a selected list of commodities manufactured in the Atlanta area, both high-grade and low-grade and medium-grade, to show that there is a need for competitive rates and to show this need has not been met by the Southern carriers.

These manufactures are designated by the latters A, B, et cetera, on sheet 5 of my Exhibit No. 220.

This exhibit also shows what the actual rates are on these commodities that are manufactured in Atlanta and I want it clearly understood that all of these commodities are sold in Official Territory as well as Southern Territory in competition with similar manufactures located in that territory.
[fol. 5231] I merely selected these particular commodities because of their wide range in character.

The exhibit shows clearly what the present rate level is in the South as compared with the North and what the inter-territorial rate level is.

Most of the articles enumerated on this exhibit move on exception to the classification.

Commr. Aitchison: You are speaking of 25?

The Witness: Yes.

Commr. Aitchison: Please point out where the inter-territorial are. I don't get that.

The Witness: You have three columns, Mr. Chairman. The first column is the Southern level and the second column is the Official Territory level, and in the third column is the level from the South to Official.

Commr. Aitchison: Expressed in percentages of what?

The Witness: Next to percentage columns are the levels relating to each other. In other words, taking the first items there, brushes, the Southern level is 90 per cent of the Northern level and that is true as to the inter-territorial rate,——

Commr. Aitchison (interposing): Let's not go into that. Let's take brushes NOIBN south to Official is 70 per cent. 70 per cent of what?

The Witness: 70 per cent of 1st Class.

[fol. 5232] Commr. Aitchison: Applicable from the South to Official?

The Witness: That is true.

Commr. Aitchison: And that would be a combination of——

The Witness (interposing): No, it is not a combination. It is an exception of 3rd Class.

Commr. Aitchison: How would 1st Class be stated from South to Official?

The Witness: It would be stated 138 per cent of the Official Territory level. That is the way these percentages are arrived at, just like I did on my other exhibit.

Commr. Aitchison: K-2?

The Witness: Yes, sir, K-2 vs. Appendix E. That would vary, you understand, at some particular point?

Commr. Aitchison: Certainly.

The Witness: This is merely expressed in a general level.

Commr. Aitchison: From Atlanta?

The Witness: Yes, sir, and we have very few 1st Class rates from Atlanta to CFA Territory and Illinois Freight Association Territory, that are less than K-2 scale, so I think this is a proper measure—that is a proper measure to use in testing the rates from Atlanta.

Commr. Aitchison: How are you able to get at it being 70 per cent and make it 97 per cent when you relate the two together when you have the varying mileages up to the point [fol. 5233] where your K-2 scale begins to apply.

The Witness: I will answer, Mr. Commissioner, I am dealing with the ultimate freight bill that the man pays on

these brushes, and his freight bill from Atlanta to Point A, or say Detroit, Michigan, is just 138 per cent higher than it would be if it came from a manufacturing point in Official Territory for the same distance. I mean if you had the full 1st Class. In this instance he is less than the northern man. In other words, he has a rate from Atlanta to Detroit that would be 97 per cent of the Official Territory level.

Commr. Aitchison: That is what got me. I didn't see Detroit in your exhibit.

The Witness: I could take out a specific point and give you an actual rate.

Commr. Aitchison: It would be a different per cent, though, wouldn't it?

The Witness: No, it would probably be about 97 from an equi-distant point in Official Territory to Atlanta. It might be 98 or 96 or 99.

Commr. Aitchison: I had not thought the K-2 scale worked that way.

The Witness: In other words, Mr. Commissioner, in testing the Docket 13494 1st Class rates from Atlanta to Central Territory you find on an average that it is the same as—only a cent or two different than the K-2 scale if it [fol. 5234] applied direct and when we get over to the Washington Terminii three or four or five cents higher than the K-2 scale. I filed the exhibit in Indianapolis and it is included in my Exhibit No. 88 to show you to what extent these 1st Class rates are the same as or higher than the K-2 scale.

Commr. Aitchison: If that is in the record, that is all right.

The Witness: For instance, from Jacksonville, Fla., I think most all of their rates are higher than the K-2 scale if applied originally from origin to destination. Of course that isn't true from Trunk Line Territory.

The only difference between this exhibit and the one I filed at Indianapolis covering a wide range of commodities is as to Trunk Line Territory; I mean in order to arrive at an approximate level I took 92 per cent of the total so it would be a little lower than this exhibit shows it, but I think this is sufficient for the purpose for which I am using it.

I had in mind—I haven't enough of the catalogues—I wanted to prove beyond doubt that this production is

bona fide. I will let you look at them. They are not going to be filed as an exhibit, just to show that we do sell brushes. There is no question about it.

The next item appearing is calendars. We have in Atlanta some very large printers. We try to get some business in Official Territory. We do get some business some [fol. 5235] times and at the present time are doing a great deal of work for the Government, but of course that is not ordinary work, but with respect to the calendar situation we have one printer in Atlanta, and a rather large operation, and he endeavored to get into this business and did secure at one time some business in the North and I think the calendars made in Atlanta are just about as good—Now this Gulf Refining calendar, that business was secured one year and was later lost because of our inability to secure proper rates out of Atlanta, carload—they all move in carload quantities.

The business of the International Agricultural Corporation was also lost for the same reason and you will find the 1940 contract of the Atlantic Coast Line Railroad, one of our main Southern railroads, was given to this concern but he hasn't had it since that date, although he is located on the Georgia Railroad, a child of the ACL, and the ACL today is buying their calendars in Chicago.

When this Gulf Refining Company contract came up on April 9, 1941, I made a very strenuous effort to have the Southern carriers do something about these rates into Official Territory.

I finally reached an agreement with the Southern lines as to certain rates to be published to Boston, New York, Philadelphia, Pittsburgh, Toledo, Louisville, and the proposal was filed under date of July 7, covered by submittal [fols. 5236-5237] No. 26056, suggesting those particular rates which were not entirely satisfactory and were not on a destination level by any means, but nevertheless we felt might permit this manufacturer to continue being favored with this business.

That problem met the usual fate of all inter-territorial problems that come from the little man. It was non-concurred in very promptly by the Official Territorial Lines, and my file is closed. No rates were ever published. Consequently the calendar manufacturer in Atlanta is not in the calendar business any more, although he prints just as good a calendar as our very good friends.

Mr. McCollester: Where did he get his paper?

The Witness: That brings up another question of in-bound raw material. While it is true that some of this so-called white paper can be secured in the South, it so happens that this particular printer gets all of his paper from the East so he pays a rate in-bound on print paper 138 per cent of the Northern level and then pays rates out-bound of what you see here in this exhibit which is also 138 per cent and that is the reason why he is unable to even sell his own people in the South.

The next manufacturer, No. C, manufactures electric appliances.

This manufacturer also endeavors to sell in the North. I will give you the catalogue of this manufacturer.

[fol. 5238] Commr. Aitchison: Are you going to be asking us for coupons pretty soon?

The Witness: No, you can throw them away.

This manufacturer was a party to the Southern Governors Commodity Rate Case, Docket No. 7746, but the Commission held there that he had not made a case under Section 3 by virtue of the fact he could not prove any damage in his effort to ship into the North so it seems that the railroads and the Commission both have thrown us out so far as this particular manufacturer is concerned.

Commr. Aitchison: Is he being damaged?

The Witness: He is having to meet this competition in the North, and to the extent he can secure any business north of the Ohio River it is necessary for him to shrink his profits to that degree, and of course that reaches a saturation point very soon after he reaches the Ohio River.

Commr. Aitchison: If he can make out a case our doors are open.

The Witness: We tried to make out a case in the Governors Commodity Rate Case but the Commission decided against us.

The next item is Manufacturer D, cotton clothing, and I think what I have said about the cotton clothing before will be sufficient, except in this instance I have included clothing NOIBN which would cover other than work clothing.

You can see the difference between the two rate levels on [fol. 5239] one kind of clothing, all of which is manufactured in the South. The clothing other than work clothing: Our level into the North 197 per cent of the northern

level illustrates on work clothing it is 138 per cent of the northern level, and that all comes about by this ingenious method of using Index 100 rate to measure your rate levels.

Mr. Grubbs: Did you say all these are class rates?

The Witness: No, sir, they are all exceptions, and if you would desire I will give you the commodities on there on which there are no exceptions, but nothing but the classification basis applies: It would be: B calendars; C electrical appliances; E cloths or rags, wiping, carload; M, tanks, iron or steel; N, wine; and P, lead products.

As to those, the classification basis applies—the classification bases apply today and are involved in this case so far as those particular commodities are concerned, technically.

The next item is machinery wiping rags. That is a manufactured product. It is produced in rather large quantities in Atlanta and at certain other points in Southern Territory and at particular points in Official Territory.

The carload basis within the South and from the South to the North is 180 per cent of the Official Territory level.

We were not very much concerned about the carload rates on these articles until there began a demand under the [fol. 5240] present emergency for the purchase of these rags in carload quantities.

The l.c.l. basis is the same as the rates on textiles, and it took about three years to have this particular adjustment made on these rags in the South and inter-territorially, but in any event they do not apply on carloads. Therefore, our l.c.l. rates into the North are very near the northern level so we haven't complained so much about the l.c.l. rates, but when this carload business came into the offing then we were very much embarrassed.

I have here, Mr. Commissioner, a number of bids of the United States Government which these people have bid on at Sewell's Point, Norfolk, Virgina, and Mechanicsburg, Pennsylvania and Bayonne, New Jersey, and these bids have all gone to the northern manufacturers except that last one, and that comes about by the establishment of a rate from Atlanta to Norfolk at our insistence that would put this man in competition with the northern producing points.

That matter was first handled with the Southern Railway on October 7, 1942. The rates became effective on

March 2, 1943. There was fairly prompt handling of that situation at Norfolk. Of course we agreed there was no hopes of getting the Trunk Lines to concur in rates to Mechanicsburg and Bayonne, and we did not file a proposal to cover those rates.

The Southern Railway, however, was not willing to meet the northern level precisely at Norfolk. They were willing [fol. 5241] of course to establish a rate of 46 cents. That rate represented a rate 5 cents higher than if the Northern or Official Territory basis were applied.

I was forced to accept the rate although I felt that the southern lines should establish the northern level which would have given Atlanta a rate of 41 cents.

After that rate was under consideration, and the assurrance that it would be established by the Southern lines, this Atlanta producer was able to secure a contract from the Government covered by Negotiation No. 2698 dated January 15, 1943, distributed by the Navy Department for delivery of 690,000 pounds within a certain period at the Navy Yard at Norfolk, Virginia.

That business was secured by these people on a delivered basis of 10.35 per pound whereas their competitor at Hamilton, Ohio, who had been securing this business heretofore, bid 10.87 so you can see how close those two bids were and what the difference in rates means when you understand that the prior rate from Atlanta to Norfolk was 75 cents and from Hamilton, Ohio, 42 cents. That shows that the competitive situation is controlling in many instances with respect to a commodity of this character.

I don't think it is necessary to read these bids that have been offered but they run into the millions of pounds of these rags, and it is valuable business, but there is no [fol. 5242] chance for the Atlanta manufacturer to secure any of that business.

Commr. Aitchison: Do they normally take class rates?

The Witness: Well, they take class rates today. No, sir, they are usually on a textile basis.

Commr. Smelker: Are those sterilized rags you are talking about?

The Witness: Yes, sir, sterilized or manufactured machinery wiping rags.

Commr. Aitchison: Are the rates from Atlanta higher than the textile rates, you say?

The Witness: Yes, sir. The next item is toys. I am referring particularly to a definite type of doll that is manufactured in Atlanta. I think the Atlanta production is about the second largest in the United States of this particular type of doll.

These people have quite large factories and they have continually complained about their in-bound raw material rates vs. those located in the Metropolitan District for instance in New York, and their rates out-bound.

Sheet 5 shows the disadvantage of this manufacturer with those located in Official Territory.

Commr. Aitchison: Going back to these rags, you say they are sterilized?

The Witness: They are prepared rags. They are not run-of-the-street rags. They are sterilized and are a prepared [fol. 5243] rag.

Commr. Aitchison: How are they packed?

The Witness: They are packed in cartons. They go to the Navy.

Commr. Aitchison: Any particular dissimilarity in the packing from textiles?

The Witness: No, sir.

Commr. Aitchison: Because they are sterilized do they have any greater value?

The Witness: No, they are not as valuable as textiles. It so happens that they are not on the textile basis, carload. We have had no carload movement to speak of, and that is something the Southern carriers haven't had before them.

Mr. Smelker: Some States require they should be sterilized.

The Witness: Oh, yes. If you take the run-of-the-street rags, which are reconditioned by these reconditioning plants, they all have to be sterilized before they can be shipped out again.

The next item is garment hangers, pulpboard.

After the iron and steel situation became acute, incident to the war, there was a widespread demand for these pulpboard garment hangers. We have some quite large paper converters in the Atlanta area, that is converting paper into specialties, and in fact one of these converters has the [fol. 5244] patent, so he claims, on one of these garment hangers, but as everyone knows, an article of this kind is

very cheap and in endeavoring to supply certain demands for these hangers, particularly in Official Territory, the question of rates became a very live question, and that matter had been before the Southern carriers for quite some time, in fact since September 1942, and there has been no agreement reached as yet with respect to the rates on these articles between Southern and Official Territories.

The exhibit shows what those rates are today, and here again you will find that they are rated the same percentage of 1st Class in the two territories, and inter-territorially and that gives us that automatic 138 per cent difference.

This board that is used, of course our rates in-bound on the raw material are on the northern level so we have no complaint about our in-bound raw material rates.

In other words, if our out-bound rates on these articles had been the same to begin with as the northern manufacturer we would have had no trouble in securing certain business that was offered.

Our next item is flavoring syrup.

Chmn. Alldredge: Would that include Coca-Cola Syrup?

The Witness: Coca-Cola Syrup, yes, sir. In addition to the manufacture of Coca-Cola Syrup in Atlanta we have two other quite large productions. One is the Nu-Grape Syrup. [fol. 5245] The Nu-Grape Company of America produces all of its syrup at Atlanta whereas the Coca-Cola Company does not.

We have one other large production of chocolate syrup, this so-called fountain chocolate syrup that is used for your malted milk, and that has a national distribution so it can be said with assurance that Atlanta is vitally interested in the rates on flavoring syrup.

To most destinations in Official Territory the rates on flavoring syrup from Atlanta are constructed on a combination basis. I haven't undertaken to show what the combination produces and I have only undertaken to indicate the level in the South and the level in Official Territory. Those two levels are the same.

The Column 37 in the South and Column 52 in Official Territory represents identical levels, but now when our people go to ship into the North they meet a different condition.

They are required to pay a level of 147 per cent of the northern level which is even higher than the 1st Class relationship; they just would not be able to market their

goods, particularly this chocolate syrup on any such difference.

For instance, the chocolate syrup manufacturers draw their raw material from the same source of supply that the northern manufacturers do, that is generally speaking, Hershey, Pennsylvania, and Fulton, New York, and Brooklyn, New York.

The rating is Official Territory on chocolate coating, [fol. 5246] 29 per cent of 1st Class, whereas we pay 35 per cent of 1st Class in order to get our chocolate coating from these northern manufacturing points.

Commr. Aitchison: I wish you would tell me how you figure that 147 per cent.

The Witness: That is the relationship of 55 to 52; 55 of K-2 to 52 of Appendix E. In other words, to get 138 you would have 55 in the Official Column and 55 in the South of Official but you have 52 in the Official and 55 from the South of Official and that produces 147 per cent. In other words, our rate level on the in-bound material is even higher than our out-bound difference on the finished product.

I think that is perfectly apparent that a Southern manufacturer is not going to be able to prosper very much under any such adjustment.

Mr. McCollester: Coca-Cola?

The Witness: I wasn't referring to Coca-Cola, Mr. McCollester. Coca-Cola has plants in every territory. These other plants do not have but one plant.

I might state right there though that this remark incidentally of the far-sightedness on the part of the Railroad Classification Committees, and I think Mr. Fyfe's statement about the rates on flavoring syrup is about as fair an illustration of the railroad's policy as to classification matters as could be exhibited.

[fol. 5247] He took occasion to criticize the traffic officials of the railroads for departing from the Commission's basis on flavoring syrup. He entirely ignores the fact that these levels in the South and in the West, which is 42 per cent of 1st Class, and in the North are absolutely necessary to get any of this traffic and still some of it moves by truck.

If you had a level any higher than that the railroads wouldn't haul any of it, though Mr. Fyfe contends that it is ridiculous to reduce the rates to these levels. That

shows the attitude of the Classification Committees of these rail carriers.

Mr. McCollester: Mr. Chairman, of course I appreciate that the Commission cannot always follow the strict order of going forward with proof, but I submit that this line of testimony which the witness is now giving, and Sheet 5 of his exhibit, cannot by any stretch of the imagination be considered rebuttal.

It seems to me that this is part of a new case in chief establishing, or trying to establish I should say, some claim with respect to these rates.

We have several shippers of these commodities in our territory. We may want to have something to say about this showing here, whatever it may be. It seems to me that this is no time, at the very end of the case, to come forward with this on the ground it is trying to rebut something.

[fol. 5248] Mr. Grubbs: I would like to join, if your Honor please, in the objection that has been made by Mr. McCollester, and to say further that this exhibit was not distributed as other exhibits have been, in advance of this hearing, but was given us only this morning.

This whole part of Mr. Hart's evidence comes completely in the nature of a surprise to us, and we are not prepared, as we desire to be prepared, to meet evidence of this kind or any kind with which we may be faced.

Commr. Aitchison: Of course so far as the rates are concerned they would be subject to check.

Mr. Grubbs: Of course that is true.

Commr. Aitchison: That simply leaves then, doesn't it, the question as to whether Mr. Hart is reasonably accurate in stating the commercial conditions of the manufacturers and so on, at Atlanta. Haven't you your own people here, of the Southern Railway, that can answer that question?

Mr. Grubbs: The answer may be a little bit more than a challenge to Mr. Hart's knowledge of the economic conditions.

The Witness: I represent these people. I know what their problems are.

Mr. Grubbs: Your Honor will recall that in the case of other shipper witnesses we have undertaken to present through rate exhibits a showing for example of this nature that the competitive conditions complained of would

[fol. 5249] not be bettered but would be worsened by a leveling process, that is to say, by a uniform adoption of the class rates, and it might be that we would wish to submit evidence of that nature, I don't know, but this comes on us as a surprise. That is the point on that which I wish to make.

Mr. Norman: In the first place, if the Commission please, I hadn't understood that any of these parties have been confined to rebuttal testimony at this hearing but we have tried for the most part to make ours exclusively rebuttal.

As to these particular rates here, so far as the rates are concerned, of course as the Chairman has pointed out they are subject to check.

So far as this testimony about the effect on these industries is concerned, of this rate adjustment, I don't know how anybody could rebut that.

Commr. Aitchison: I think it is probably proper rebuttal of testimony to the effect that it was testified to by Mr. Widell and others that the South wasn't interested, if its true interest was considered.

Mr. Norman: It is just showing illustrations of where they are.

The Witness: And further, I intended it to be a rebuttal of——

Commr. Aitchison: (Interposing) Well, now, I have ruled in your favor. If you want to argue it, I may change it.

[fol. 5250] The Witness: All right. I didn't know you had ruled on it.

Shipper designated J is a manufacturer of automobile engine belts, hose, and vulcanizing patches.

Commr. Aitchison: I will have to ask you to be as brief as you can on this.

The Witness: This manufacturer distributes in the South and also in the Southwest, and endeavors to get into Official Territory. He has never been able to secure any rates so far as Official Territory is concerned.

He draws his raw material, which is comprised principally of crude rubber, from the pool in New York, under normal conditions. He doesn't get any today, but under normal conditions it comes from the New York pool.

The rate on crude rubber into Atlanta from New York is on the northern level. So far as his in-bound raw material is concerned, he is on an equality.

Shipper K is a manufacturer of school blanks and forms, pads, tablets, and so forth, a very large manufacturer.

His tonnage probably will run in the neighborhood of 7,500 pounds per annum.

This shipper complained in the Southern Governors Case and was there accorded relief as to one part of his production but as to the other part the Commission held he had not made a case because he hadn't shipped into [fol. 5251] Official Territory, but it is absolutely impossible on goods of this character for an Atlanta manufacturer to overcome the disadvantage in transportation costs which are wholly controlled by the cost of moving these goods from Atlanta to Official Territory in competition with northern manufacturers.

You will observe in some instances here the rates from the South to the North are 175 per cent of the northern level. This manufacturer, although a large manufacturer and compares with those located in the Miami Valley and elsewhere, is unable to secure any business north of the Ohio River.

To the Ohio River and in the South the level of rates on these articles is identical with that obtaining in Official Territory. The levels are identical in the two territories whereas inter-territorially we are confronted with this rate wall.

Mr. McCollester: Mr. Commissioner, this is a very good example of the prejudice we are suffering of having what is now Complainant's case come in at this stage, because in the Southern Governors Case we dealt with this particular article. We produced evidence as to the situation in Official Territory and on the basis of that evidence you dismissed the man's complaint. Now we have no chance to produce that evidence.

Mr. Norman: What evidence?

Mr. McCollester: I know in the Southern Governors Case they said it was perfectly all right, that he had no [fol. 5252] ground of complaint and they dismissed him on it.

Commr. Aitchison: He hasn't shown any changed circumstances, has he?

The Witness: All I intend to show by this is the Southern carriers have not been able to put this particular manufacturer into Official Territory because the Official Territory Lines will not concur in rates from the South,

and that is the reason I am rebutting this evidence by the railroads that there is nobody complaining, that whenever they want rates they could get them, and he can't.

Mr. McCollester: In the Southern Governors Case the showing was that he had nothing to do with it.

The Witness: Well, the Governors Case will speak for itself without you testifying about it, but I say he wants to go into Official Territory and if he had the rates he could go in there.

Mr. McCollester: Why didn't he come in and testify at the first hearing?

The Witness: Because his rates are not involved in this case at all.

I am answering Mr. Oliver when he said nobody had complained about it. I am showing you we do have complaint. This is rebuttal of what Mr. Oliver stated that nobody in the South complained; that when they needed rates they came to you and you gave them to them, and [fol. 5253] I am showing that isn't true, and I have selected this particular group of commodities—that is not all of them by any means; the Southern Railway in some instances has been willing to put rates in but the Official carriers will not concur in them, and I say we are still paying these higher rates.

Mr. McCollester: Then are we to understand some of these rates are not involved?

The Witness: Yes, they are, and I gave the exceptions.

Commr. Aitchison: He gave the exceptions. He called attention to B, C, E, M, N, and P.

The Witness: But I am here rebutting what the Southern carriers tell this Commission.

Commr. Aitchison: Go on.

Mr. McCollester: Before you leave that, where does the particular manufacturer get his paper?

The Witness: This manufacturer uses both newsprint and other white paper. Some of it is produced in the Southern mills; some of it in the Northern mills and of course the news print comes either from the North or from the Coast.

Commr. Aitchison: We have had, of course, testimony with respect to wine by the wine manufacturer, haven't we?

The Witness: Yes, but I wanted here to point out, which was not pointed out there, just where we have been get-

ting with rates on wine. I am perfectly willing for the exhibit to speak for itself except to say that as to L, M. [fol. 5254] and P—Well, I want to say something about P, just say L and M, the conditions are the same there as to the other manufacturers.

As to wine I think that has been pretty well covered in this record except that I wanted this Commission to know how long we have been trying to get these rates into Official Territory.

Disregarding the preliminary handling that I have given this matter in the beginning, wherein I was unable to get a Southern carrier to even file a proposal suggesting the rates on wine, I was finally told by one of the Southern lines that perhaps I might interest the Southern Freight Association in getting out a proposal that would be distributed and therefore give the lines an opportunity to consider it.

Following that suggestion on May 20, 1937, five years ago, I wrote Mr. Kerr, Chairman of the Southern Freight Association, at length, to be exact, four pages single-spaced; setting out the situation with respect to the wine industry in Georgia and particularly in Atlanta and what their needs were, and I was informed by Mr. Kerr that if I would draw up the proposals myself that he would be kind enough to distribute them.

I did. I took the form and drew up these proposals myself, took them over to Mr. Kerr's office, and they were reproduced under Submittal Nos. 14717, 14718, Pacific Coast; 14719 Official Territory; 14720 Western [fol. 5255] Trunk Line and 14721 to the Southwest, embodying the rates which I felt these wine people would need in order to further this new industry.

Those submittals were attached to a letter addressed to me dated June 2, 1937.

The matter of wine rates since that date has been one of continuous consideration, and that remains in that same status today. None of these proposals were approved. They were all disapproved.

Commr. Aitchison: The proposals were for a commodity rate?

The Witness: Yes, sir. I submitted a complete proposal to every section of the United States with actual rates. They were distributed and nothing has ever been done about it.

We did get some rates into the Southwest by virtue of the action of the Southwestern Lines in establishing rates from Denver, Colorado, and we were finally able to persuade the Southwestern Lines that they should treat Atlanta as well as Denver, and were able to secure some relief into the Southwest, but there was no effort on the part of the Southern Lines that brought that about.

Just recently we were able to persuade the Southern Lines that they should establish rates to the Ohio River, and that has been done, but as to Official Territory, after the Columbus hearing Mr. Oliver instructed Chairman Kerr to initiate a proposal suggesting rates on wine on lines from the [fol. 5256] South to Official Territory, and that remains today just where all the rest of them are, non-concurred in by the Official Territory Lines, and I would venture the prediction that it will stay there, so we are still without rates.

Commr. Aitchison: You are without commodity rates?

The Witness: Yes, sir.

Mr. Norman: Or without rates on the basis of the rates in Official Territory?

The Witness: That is right. That is correct.

The only reason that we have a level that is so near the Northern level, that is 27 per cent higher, rather than something less higher on wine in containers is by virtue of the reduced rates which these railroads put in on alcoholic liquors. They felt like they couldn't refuse the wine people rates no higher than those on hard liquor, so they included the wine rates along with those liquors, and by that means we got a reduction in the classification basis so far as wine in packages is concerned, but as to tank cars of course we got no relief.

Commr. Aitchison: I don't understand. You told me that was involved in this case.

The Witness: It is on tank cars because it is a classification basis.

Commr. Aitchison: But not on containers?

The Witness: No, sir. Probably I should have modified [fol. 5257] that.

I did want to mention these lead products for a minute.

We have quite a large converter of lead in Atlanta that we are trying to build up.

We were able to secure adjustment in the in-bound raw material rates on pig from the Western smelting points.

For instance, using Anaconda, Montana, as a basis point in the producing area of the West the rates to Atlanta (this is without the 148 increase) is $13.75 per net ton; Baltimore $13.09; to New York $13.75 and to St. Louis $9.90.

I am naming those points because they are highly competitive with the Atlanta fabricator.

You will find that with the exception of Baltimore and St. Louis that he is fairly related to his competition as to raw material.

We were able to secure rates from Atlanta to the Ohio River and Virginia cities on the Northern level, but we haven't been able to go any further.

Commr. Aitchison: How is that affected then so far as being within the scope of this investigation, if you have been able to get rates?

The Witness: Inter-territorially it is affected by virtue of the fact we have to pay 7th Class inter-territorially and that is 138 per cent of the Northern level, which is also classification basis of 35 per cent.

[fol. 5258] Commr. Aitchison: It is only inter-territorial?

The Witness: That is right. It is the same thing in the South.

Commr. Aitchison: I thought you said you had an exception.

The Witness: Oh, yes, we have an exception in the South, but the point here is these Southern railroads, although willing to put in competitive rates, were unable to go any further than the Ohio River. The Northern carriers won't go along with us.

Commr. Aitchison: Does that conclude that?

The Witness: That concludes that part of it.

Commr. Aitchison: Do you offer in evidence Exhibit No. 220?

Mr. Norman: Yes.

Commr. Aitchison: Without objection it is received.

(Exhibit 220, Witness Hart, received in evidence.)

The Witness: (Continuing) Both Messrs. Oliver and Tilford refer to the large movement of traffic on class rates from Official Territory to the South (Oliver, pp. 3838 and 3839) (Tilford p. 3897); but neither of these gentlemen disclosed the true fact that a large proportion of this miscel-

laneous south-bound high class traffic, on which they state the present high class rates are applied, moves in freight forwarder service, on which low carload all commodity rates [fol. 5259] are provided, or to what extent this traffic that formerly moved generally into the South via the rail carriers on the Classification basis has been diverted to the forwarders and now moves on carload rates, or what proportion of this tonnage is favored with rates little different from the Official Territory level because of the reductions made effective September 1, 1940.

This naturally has a direct bearing on the claim of witnesses for the Southern carriers concerning the revenue effect of changing the inter-territorial rate structure, particularly as it might affect this south-bound high grade class traffic. That the change in the flow of this class rate traffic is material cannot be denied. For instance, three of the principal rail lines serving Atlanta and the direct Southeast terminated in round numbers 9,000 cars of forwarder freight in the year 1941. With respect to Atlanta—the largest receiving plant of forwarder freight—it does not take into account the very large tonnage of forwarder freight handled by one of the larger forwarding companies via contract motor carriers.

A new condition that very much concerned our people is the probable effect on the Southern industrial situation because of the concentration of defense contract awards in the East and Central States, which has caused large expansion in plant facilities in those sections to meet these demands. This industrial concentration has significance in [fol. 5260] regard to the well-being of the entire United States, in addition to the immediate economic significance of having one region of the country largely a work shop and the other regions raw material and semi-finished goods producers. That this condition may have a far reaching effect on the South's economy cannot be disputed.

Many of those connected with defense production tell me they are aware of the condition. Before a Committee of Congress, Donald M. Nelson, at that time Director of the Division of Purchases of the Office of Production Management, stated that "the distribution of Army and Navy orders has tended to follow rather than to deviate from the previously existing pattern of industrial activity".

Therefore, I desire to place before the Commission, in a few words and without an array of figures, a realistic conception of the South's economy. The economy of any country—or its sub-divisions—and transportation in all of its phases are inseparable. I have endeavored to present a realistic picture of the present conditions with respect to the class rate structure applied in the territory east of the Mississippi River.

The South is entering a cycle which is the reverse of the one of 150 years ago, which might well be referred to as the "cotton economy", as compared with present "industrial economy". The economic laws which control the destiny of [fol. 5261] millions of persons living on cotton farms in the South were not written in the legislative halls of our country but in the work shops of England. It was the invention and use of cotton textile machines which established in England the factory system of manufacturing that is now universal throughout the world. And it was the inauguration of the factory system which led to the demand for raw cotton as a source of cheap fabrics.

To supply England's demand for raw cotton, the people in the Southern portion of the United States abandoned one economy of living and established another. The South's dominant position of leadership in American industry—developed as it was through many small units—had no appeal compared with the romantic possibilities of farming on a vast and magnificent scale.

It has been said that the invention of the cotton gin by Ely Whitney in 1793 changed the South's destiny from that of industry to that of agriculture. Factories and shops were closed; and the people of the South—just as those in every other colony in the British Empire—devoted themselves to the task of producing raw materials to keep the wheels of England's industries moving.

It is an interesting fact, looking back on the history of 150 years, to realize that we in the Southern part of the United States established a hand-labor economy to support [fol. 5262] and make possible the first large scale machine-labor economy in the world. And it is interesting and significant to realize that our forefathers in the South established a hand-labor economy in the New World at the very

time when such an economy was being abandoned by the British Empire for its citizens living in England.

The effects of the loss of foreign outlet for American cotton and its domestic displacement by other fibres are known to every person who lives in the South, even though definite details may be lacking.

There are those who censure the Federal Government for following a short-sighted and unwise policy; but, be that as it may, the fact remains that a market once lost is never fully regained, and, as a result, it becomes necessary for us to accept conditions as they exist and return to the economy of our first choice—industry.

We, today, do not censure our forefathers who 150 years ago abandoned the safe and sane economy which we are attempting to re-establish. By recalling the facts that led to the development of the "cotton economy", under which we have lived, we hope to hasten re-adjustment by pointing out the fact that the circumstances which brought such an economy into existence no longer prevail. We merely wish to act as intelligently as our ancestors, who were quick to see and meet the market demand. It is gratifying to [fol. 5263] know that the rapid change in the South's economy will not be confined to the conception of some of those who have discussed it here.

We do not deny that the rate-making policy of the railroads operating in Official and Southern Territories has been different, or that originally the rate structures were developed along different lines and that the distribution of the traffic burden and the composition of the traffic have been different in the two sections. But these conditions are fast changing along with the South's economy. It has been testified by many here that the South is going forward in leaps and bounds industrially. Conversely, any informed person knows that the composition of the traffic in the South has changed and the distribution of the traffic burden is entirely different, from what it was 20 years ago.

However, the mechanics of rate making by the rail carriers, as well as the motor carriers, in the different geographical sections of the country, have become almost identical. This has been brought about primarily by changes in the law and the organization of rate associations in the different rate territories. They disagree as to level (color), but not as to pattern. This is a realistic condition—there is nothing theoretical about it.

There appears to me to be little disagreement between most of the Southern shippers and the Northern shippers—except, possibly, those located in the State of New York—[fol. 5264] nor between us and the Official Territory carriers concerning an equali*ges*tion of the class rates in these two geographical sections.

I do not understand, for instance, that it is the position of most of the Northern shippers that a mill located at Indianapolis, Ind., and one at Atlanta, Ga., should not compete on an equal basis so far as transportation cost is concerned, either in the South or in the North. Most public officials are of like mind. Certainly, this is true of the Southern public servants.

With The possible exception of the Eastern shippers, apparently the principal apprehension of those opposed to the suggestion that perhaps the time has arrived for the unification of class rates and classification, at least in the eastern section of the United States, originates primarily with the Southern rail carriers, because of the fear that it might adversely affect them financially.

Of course, this premise disregards the rapid change that is taking place with respect to the composition and flow of traffic handled by the Southern railroads. The source of new revenue, so far as the Southern railroads are concerned, is being rapidly increased. Therefore, past experiences are not indicative of revenue consequences that might conceivably flow from a re-adjustment in the present class rate structure in the South.

But the revenue alone is not a sufficient argument to [fol. 5265] support the present theoretical differences in the class rates—particularly the 1st Class 100 rate in the several geographical sections of the country. The revenue needs of the involved carriers can well be determined under the law, and it accordingly empowers the Commission to properly distribute it.

This Commission's legislative powers should be invoked to create a class rate structure responsive to the demands of this country's commerce which will be as simple as it can be made, and free from undue prejudice.

I believe that these observations might well be given consideration by the Commission in legislating the future class rate structure which we of the South are suggesting.

I prepared Sheet 4 of my Exhibit No. 220 to show the reverse of the situation which Mr. Rive has exhibited in

his new Exhibit No. 200 with respect to machinery originating in the South and shipped into Official Territory as compared with his exhibit in the reverse direction.

The purpose is to show that the Southern manufacturer, which is right considerable at the present time, on machinery, that he would be better off in the swap.

As I gather it from Mr. Rive's exhibit he wanted to show (Why I am unable to say) that the spread against the Southern shipper would be narrowed by establishing the Official Territory level on machinery.

I just took the same premise on Sheet 4 and I show how [fol. 5266] well off he would be when he shipped into the North under the same basis, and in the trade he would probably be better off all the way around.

Mr. Rive, however, introduced a further exhibit on the machinery, No. 201, so I think my Sheet 4 of Exhibit No. 220 is a fair answer to Mr. Rive's showing south-bound.

Mr. Wolford yesterday introduced Exhibits Nos. 210 and 211; Exhibit No. 210 covering the rate on glass bottles, and followed the same plan that Mr. Rive followed in his exhibits Nos. 200 and 201.

Exhibit No. 211 is a similar exhibit on furniture.

Of course these exhibits merely show the narrowing of the south-bound difference between a Northern manufacturer for instance of furniture as compared with a Southern manufacturer.

Of course I can speak with assurance so far as the Atlanta manufacturers are concerned, and of course there are no mattresses produced at *the* Birmingham, and it is merely a paper showing as to Birmingham, but so far as the Atlanta manufacturers are concerned they have no objection whatsoever to the Northern manufacturers of mattresses or metal furniture or wood furniture coming into Southern territory on the same level that they go into Official Territory on, whatever that level might be.

I submitted a statement, which I haven't reproduced here, [fol. 5267] in answer to a similar contention made by one of the parties in this case about the narrowing of the spread, so I selected Birmingham and St. Louis into 20 points in Official Territory that were equi-distant from St. Louis as the Southern points which were shown from Birmingham, and then applied the Official Territory level from Birmingham vs. the competition as to St. Louis, and

that study shows that the Southern manufacturer's average price difference in these 20 points was $1.11½ per 100 pounds, whereas if the Northern level were applied from Birmingham his difference would be reduced to practically 58 cents per 100 pounds.

If you will check that comparison with this south-bound comparison you will find that the Southern producer, if a common level of rates were applied on these mattresses or furniture, that the Southern producer in the aggregate would be much better off providing he marketed his goods in Official Territory, which he wants to do and does do so far as mattresses are concerned, and many other grades of furniture.

So I don't know what the purpose of these exhibits is, but those are the facts.

I did want to just briefly in passing refer to the 6th paragraph of the statement submitted on behalf of the Governor of New York, and call attention to the figure of 35 per cent mentioned in that paragraph, and refer the Commission to Section III-B of my Exhibit No. 88 wherein I [fol. 5268] have shown the level of rates on many classes of commodities between the South and the North which are less than 35 per cent and some of them greatly exceed 35 per cent, and I just don't understand a statement of this character being made by informed persons.

In connection with the statement submitted on behalf of the Indiana Governor, the question from the Bench was directed to some one, I think Mr. Hollopeter, about the rates on stoves and stone in view of the contention that the Indiana limestone industry was in a deplorable condition, which I think is correct, but it is not, of course, due to freight rates.

In any event the rates on limestone were fixed by this Commission in the Consolidated Stone Case, and they were made a percentage of the 1st Class rates and they were higher than the Northern rates, but prior to that time they were much lower than the Northern rates.

What this Commission did with respect to the stone rates was to take the Indiana limestone rates, which were the highest rates in the United States and bring up the rates from all the other producing areas to that limestone basis.

That was very unsatisfactory to the Southern producers of limestone, granite, and marble, and we made every effort

possible to have that corrected, and the Southern carriers did correct it to the extent they could, but not into Official Territory.

[fol. 5269] Then we included stone in the Governors Case, and there were accorded a parity of rates, and those rates today, while not stated as a percentage of 1st Class, they do represent a percentage of the Appendix E Scale, although stated as a commodity rate in a tariff.

That same situation obtains with respect to stoves. I thought possibly you would like to have that explanation of what transpired with respect to the rates on stone and stoves.

Stoves were also prescribed on a higher basis into the North and were later included in the Southern Governors Commodity Rate Case, and there we secured a parity of rates and they are today published as commodity rates by representing a definite percentage of the Appendix E Scale.

At the Columbus hearing you asked some one who was testifying as to whether or not these rates which were established from the South under the Commission's decision in the Governors Commodity Rate Case applied via rail and water routes. They do not. Those rates are confined entirely to the all-rail routes.

There is just one other matter. Getting back to this controversial question that the proper designation of these so-called percentage or column rates, while I have stated in my testimony that it doesn't make much difference what we call them if somebody will name them and they will just continue to call them that; I think the record should [fol. 5270] show that of the commodities listed in Appendix 2 of the Commission's Order of September 25, 1940, which was referred to in Dr. Aitchison's testimony, that certain of those commodities move on rates that are definitely related to the governing 1st Class rate, and so far as the practical rate men are concerned, certainly I have always considered these percentage rates within the scope of the class rate structure, but as I have previously stated, I don't care much what you call them, but I didn't want to leave the impression that these rates are commodity rates as we have always known commodity rates, that is, rates made without any relation whatsoever to the 1st Class rates.

For the record I would like to say these particular commodities under normal conditions move on percentages of 1st Class rate; that is, hay, straw, cottonseed, cottonseed meal and cake, vegetable oil, cake and meal, and certain products of agriculture; asphalt, salt, lubricating oils, and greases and plaster in so far as the South is concerned.

Of course, in the North that moves on what we know as a commodity rate because it is a commodity scale unrelated to the 1st Class, but in the South it appears in the exception and is a part of the class rate structure.

As to those commodities that do not move on what we have always considered strictly commodity rates: I am under the impression Dr. Aitchison included in her exhibit the consolidation of these accounts for statistical purposes; [fol. 5271] for instance, the finished stone was included with the crushed stone group.

There we have in the South a commodity that moves on a column basis or percentage of 1st Class consolidated with a crushed stone which moves on a commodity mileage scale unrelated to 1st Class.

I don't know that it is important. I merely wanted to try some way to get something tangible in this record that would permit the Commission to differentiate between a class rate, or what we think is a class rate, and a commodity rate.

On page 1732 of the record the following question was asked me as the Indianapolis hearing:

"Q. What would the result be?

"A. I have in my own mind pretty well concluded that it would hurt the Southern carriers."

My answer actually was, "I have in my own mind pretty well concluded that it would not hurt the Southern carriers," and underscore the word "not".

That is all.

By Mr. Norman:

Q. Mr. Hart, I wish you would state very briefly the reasons as you understand them why after the statement by Chairman Aitchison in the Class Rate Case the South did not adopt the suggestion and take up the matter of having those inter-territorial rates dealt with.

A. To be perfectly frank about it we were rather dis-
[fol. 5272] appointed at the inter-territorial rates which the Commission finally approved in the Southern Class Rate Investigation.

They were changed, as you know, a number of times, and they finally reached the peak of the carriers' proposals in most instances.

We began immediately (I am talking about the shippers now, and so far as my own organization is concerned and some of the other large shipper groups in the South) began immediately to consider ways and means by which that might be reconsidered by the Commission.

It was concluded to await the final outcome of the Eastern Class Rate Investigation and probably until it was put into effect, which was on December 31, 1931, as I recall it —I think that is correct.

Thereafter it was considered again, and at that time everyone knows we were straddled with a very serious depression; things were in rather bad shape with the shippers; railroads were in bad financial condition and were here before this Commission seeking increases in rates.

Commr. Aitchison: I think there was a five months' gap in there.

The Witness: Well, we were talking about it right after the order came out and we didn't like it and we didn't do anything immediately about it because we thought we would wait a little while and see.

[fol. 5273] There were further discussions as to whether or not it would be proper perhaps to ask the Commission to reopen the Southern Class Rate Investigation, or file a new case, and there was a lot of argument between us technical men—every week, put it that way—as to what would be the proper course to pursue, and some thought that perhaps the reopening of the Southern Class Rate Case would be proper and others thought that that record was dead, and we didn't want to reopen that record; it was not a record that we liked very much, so the final conclusion was to file a new case, and that case was filed just as soon as it could be got in shape.

Time passes by, and there was no way by which we might have taken quicker action, as I see it, under the then existing conditions.

But I can say positively for my interests, and as I have told you I was a very active participant in Docket No. 13494, and so far as our interest is concerned we were very much disappointed with the Commission's decision in that case and we were insistent that the other Southern interests join us as soon as possible in trying to have it corrected.

There were many things in it that were not satisfactory, not only levels of rates but these other things we have been complaining about.

Commr. Aitchison: What are they?

The Witness: Particularly one of the principal ones [fol. 5274] was this prescription of these lower relative rates into this Border Territory than in to the Deep South.

That was one, and Mr. Eastman recognized that and he recognized the validity of that and said to these Southern carriers, "You can cure that by putting in commodity rates from Atlanta."

We have that same thing coming up today. You have just decided a case brought by these Northern Georgia interests on iron and steel from Pittsburgh and Bethlehem, and there you have prescribed rates and made 30 per cent of the Border cases 1st Class rate.

The only way that the Atlanta steel interests or the Birmingham steel interests can meet that competition is for the Southern railroads to put in commodity rates to meet it; otherwise they are not going to get the business.

Commr. Aitchison: That hasn't anything to do with this question as to why.

The Witness: I say that was one of our complaints because that has been coming up all the time, and that was one of the principal complaints we had, in addition to the measure of the rates. The measure of the rates was not satisfactory, and we did consider it.

Commr. Aitchison: Is that all, Mr. Norman?

Mr. Norman: That is all.

Commr. Aitchison: You may stand aside for the time [fol. 5275] being, and we will take up your cross examination tomorrow morning.

(Witness temporarily withdrawn)

W. M. Dyer, previously sworn, was called as a witness and testified as follows:

Direct examination:

Commr. Aitchison: You have been sworn?

The Witness: Yes, sir. I testified at the Columbus hearing on behalf of the Wichita Chamber of Commerce, and Mr. Hamilton, in his Exhibit No. 18 seeks to continue the WTL zones which we attempt by our evidence, or rather myself and others, attempt to break down.

I desire to put in some railroad mileage figures for the Counties of Marion, Sedgwick, Harley and Butler County, Kansas.

The total railroad mileage for those four counties, including the mileage to the next more distant tariff named point in the next county is 663.2 miles.

The actual railroad mileage for those counties, using an estimation based on Rand McNalley Atlas 1938 is 614 miles. The author for the railroad mileage is L. E. Kipp, ICC A-2678.

Commr. Aitchison: Cross examine.

(No response)

Commr. Aitchison: That is all.

(Witness excused.)

[fol. 5276] Commr. Aitchison: We will suspend until 9:30 o'clock in the morning.

(Whereupon, at 4:55 the hearing adjourned until 9:30 o'clock a. m. tomorrow.)

[fol. 5277] Before the Interstate Commerce Commission

Docket No. 28300

Class Rate Investigation

Docket No. 28310

Consolidated Freight Classification

Main Hearing Room,
Interstate Commerce Commission Building,
Washington, D. C.,
Thursday, April 1, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Before Division 2 of the Commission

Hon. Clyde B. Aitchison (Presiding), Hon. J. Haden Alldredge (Chairman of the Commission), Hon. Walter M. Splawn and a Cooperating Committee of the National Association of Railway and Utilities Commissioners, represented by: Mr. W. H. Scott, of The Public Service Commission of South Carolina; Mr. George McConnaughey, Public Utilities Commission of Ohio; Mr. C. L. Doherty, South Dakota Public Utilities Commission.

Present: Paul O. Carter, Examiner; W. J. Koebel, Ex-
[fols. 5278-5279] aminer; T. L. Haden, Examiner. W. V. Hardie, Director, Bureau of Traffic. J. J. Murphy, Consultant.

Appearances: (As heretofore noted.)

[fol. 5280] Proceedings

Commr. Aitchison: Mr. Turney.

Mr. Turney: If the Commission please, I should like to stipulate into the record by reference the following statistical documents. These are all for the year 1940 and subsequent years are applicable.

Preliminary Abstract of Statistics of Railways.

The Statistics of Railways (that is the Blue Book).

The Freight Commodity Statistics—Annual Q-500.

Freight Commodity Statistics Quarterly Q-550, M-100, M-125, M-211, M-215, M-220, and A. A. R. C. S. 554-A.

Commr. Aitchison: Is that stipulation agreeable?

Mr. Wagner: If the Commission please, if I am not mistaken the Blue Book for 1939 is not in this record. I think Mr. Turney is starting with 1940.

Mr. Turney: I understood 1939 was.

Mr. Wagner: I do not recall its coming in.

Mr. Turney: I shall ask that it be put in.

Commr. Aitchison: Did you want to go back to 1939 then?

Mr. Turney: No, just for the Blue Book.

Mr. Wagner: In other words, the foundation of many of these studies is 1939 figures.

Commr. Aitchison: Is there any objection on anybody's part to receiving and considering in evidence these statistical compilations which Mr. Turney has referred to?

[fol. 5281] There seems to be none and they will be received.

(Statistical documents listed by Mr. Turney received in evidence by reference.)

Commr. Aitchison: Mr. Hart, are you available for cross-examination?

Mr. Hart: Yes, sir, I am ready.

E. L. Hart resumed the stand and testified further as follows:

Cross-examination.

By Mr. Clark:

Q. Mr. Hart, let me run through your statements just a moment.

I am not clear just exactly as to what parts are in and what parts are out. If I ask you about something that is out, you can correct me. Have you got the statement in front of you?

A. Yes, sir.

Q. Please look at page 9.

A. Yes, sir.

Q. Toward the bottom of the page you say "Certainly no water line has appeared here," talking about the control of the rates. Do you see that?

A. Well, it is changed to read this way now—of course the sense of it is the same—"Certainly no water line continues to control the rates from the interior east," and that is my statement.

[fol. 5282] Q. In that connection of course you recognize the water lines are now out of business; they are not functioning.

A. Of course I understand that.

Commr. Aitchison: They have got tariffs on file with us, haven't they?

The Witness: The physical operation of the water lines has been discontinued, yes.

By Mr. Clark:

Q. That is what I am talking about.

A. I want to follow that——

Q. (Interposing) Turn over please to page——

A. (Interposing) I want to follow that if you will let me answer.

Q. I asked a simple question and I got the answer. If you want to make a further statement, of course you may.

A. That is all right.

Q. Look on page 29, Mr. Hart, about the 10th line. You refer to pending proceedings, a textile and a packing house products case.

A. Yes, sir.

Q. Would you give us the docket numbers of those?

A. The textile is I. and S. 3636, reopened.

Q. That is the old case.

A. Yes, the old case reopened.

Q. What is the packing house?

A. I am sorry I haven't the docket number. I can [fol. 5283] supply it. It is pending and perhaps there I should have said that we had a pending case on hides, interterritorial rates.

Q. I asked you about these two. Let's get that straight.

A. I will supply you with the number.

Q. The truth of the matter is there has been no packing house case filed. There has been one talked about but none has been filed. Isn't that right?

A. No. There is one on the suspended docket. The packers filed a case a year or so ago and it is still pending.

Q. You will write a letter then?

A. I think I can give it to you here. Mr. Wagner, have you got the number?

Mr. Wagner: I haven't the number, but it was filed by Swift and Company.

The Witness: It is now on the Commission's docket.

By Mr. Clark:

Q. Let's come to page 31, beginning with the second line, about rubber tires. Do you see it?

A. Yes.

Q. Let me ask you if the tire manufacturers in putting their plants in the South may not have had in mind serving Southern Territory? Wouldn't that be the logical thing?

A. I think so, Mr. Clark, but in any event I know this of my own knowledge, that they found it expedient in certain instances to ship the tires into the North, and I know there is an actual movement of tires, say, from the Gadsden

[fol. 5284] plant of Goodyear to their plant in Akron that moves on combination rates, and the Southern put in a proportional rate to the level in order to permit them to do that.

Q. The manufacturer of whom you speak has a plant in Akron?

A. Yes.

Q. And there are other tire plants in Official Territory?

A. Yes, but I want you to understand I am not speaking for those interests, but I do know that condition exists.

Q. You say, "It is significant to know that the rates on processed rubber articles, such as tires, from the southern manufacturing points to Official Territory are very much higher than the rates in that territory."

It seems to me that theory of this rate-making would be that the manufacturers of tires in the South would be interested in a level within the South to serve Southern territory.

A. That is something I am not going into. I do know we had this same plant here, in Atlanta, that manufactures these rubber patches, did manufacture inner tubes for a period and he was not able to market his goods and he stopped making inner tubes for that very reason.

Commr. Aitchison: Before the next question is asked, I am left uncertain by Mr. Clark's question and the manner in which you have answered it whether or not the Southern region for which you are appearing to testify is in-[fol. 5285] terested in the matter of your intraterritorial Southern rates.

The Witness: I didn't care to discuss the reasons for building this plant there, and that was the point I was not going into.

It is a fact that the distribution of certain tires, certain classes of tires I will put it, from the Southern plants of Goodyear and one of the other companies is preponderantly in Southern territory. I mean under normal conditions.

Commr. Aitchison: Mr. Hart, I am going to give you one more chance to answer my question, and it is an important question, and the question is whether or not the league for which you appear is interested in the Southern intraterritorial rates.

The Witness: Do you confine that generally or just to tires? Generally, certainly we are.

Commr. Aitchison: Mr. Clark's question and your answer would leave a doubt.

The Witness: I don't want to leave any doubt about that.

By Mr. Clark:

Q. Let's pursue it then just a bit further, in dealing specifically with rubber.

There are tire plants in Official Territory?

A. Yes, sir.

Q. The majority of the plants are there. Isn't that right?

A. Yes, sir.

Q. The greater population is in Official Territory.

[fol. 5286] A. That is correct.

Q. Where you have the greater population you naturally have the greater consumption of tires. Is that right?

A. Yes, sir.

Q. But when — of these concerns puts a plant in the South, he has already got a plant in Official Territory and he puts one in the South, wouldn't you say, as a man familiar with these matters, that was to serve Southern Territory?

A. I would ordinarily think that would be true.

Q. Then that plant would be more interested in the Southern Territory rates than in the interterritorial northbound rates.

A. Probably would.

Q. How would he feel about the southbound rates on tires from Official Territory to the South? Would he want the Southern level or the Official?

A. I think he would want as low a level as he could get.

Q. Assuming most shippers would want the lowest rates consistent with service, and all they can get, let's assume that. Let's take this so-called destination level theory of rates, and that is what this question leads to, are you for or against that?

A. I was for it as an expedient only. I am not for it as a principle.

Q. Let's be a little more specific. We take a commodity going northbound, that our southern manufacturers produce [fol. 5287] and wish to sell in the populous northern or eastern territory. You are interested you say in those rates here?

A. Yes.

Q. And you want those rates so your producers can compete. Is that right?

A. Yes, sir.

Q. Therefore you say that if you can go into his territory on substantially his level you have a competitive situation that suits your business and needs.

A. Yes, that would meet our immediate needs.

Q. In the reverse direction are you subscribing to the same level of rates southbound, or do you say that the northern shipper shipping into the South, in competition with your southern manufacturer, should ship on the Southern level of rates? What is your position there?

A. My position is here in this case that we should have a common level of rates, and therefore that question would not be involved.

Q. Then coming back to the rubber question you would be perfectly willing for the northern manufacturer of rubber to ship into the South on the level of rubber rates applicable into the East or interterritorially northbound. Is that your theory?

A. No.

Q. Your theory is general but it does not apply to specific [fol. 5288] cases.

A. Well, certainly if we had a common level of rates that would not apply. There would be the same rate in one direction as in the other direction. He would be able to ship just as low one way as he would the other.

Q. At page 35, at the top there, you speak of the South having gone forward in leaps and bounds industrially. Is that still in?

A. Yes, sir.

Q. That seems to be factual?

A. Yes, sir.

Q. Mr. Hart, you are here complaining, as I understand it, of a rate set-up which you indicate has throttled the South, yet here at page 35 you use the expression, "The South is going forward in leaps and bounds industrially."

How do you square those two positions?

A. I don't know how you want them squared.

Q. Now, you are the witness; you tell me.

A. I don't see anything to be squared about the two statements.

I merely adopted what you gentlemen have tried to prove here, that the South was growing very rapidly industrially, and I am conceding that that is true, and therefore we have got to have some change in this rate structure.

These are practically all new industries. We have the [fol. 5289] chemical industry and we have lots of new industries down there that we have never had before. We certainly have got to have rates to move the products of those industries, and I am trying to show you here that we can't get those rates, and that is what we are complaining about.

Q. One of your new industries, is that the industry making calendars?

A. No, that is not a new industry. The industry has been there for a long period of time, but they are trying to get into a broader distribution of those particular kinds of products.

Q. Since I mentioned calendars——

A. (Interposing) It isn't funny at all.

Q. I am not saying it is funny.

A. No, but you are laughing about it as if calendars isn't anything. That traffic is important to that producer and moves in carload quantities, and I think it is entitled to rates.

Q. I don't see anyone in the hearing room laughing, certainly not me.

A. You were indicating that perhaps calendars didn't mean anything.

Q. Let's see how much they mean.

A. All right.

Q. You said the Coast Line discontinued purchasing from [fol. 5290] your calendar man in Atlanta. I suppose they were shipped to the Coast Line at some point on the Coast Line, at Wilmington?

A. That is my supposition that they moved to Wilmington deadhead, yes; no transportation charge.

Q. You also said they diverted their order to a manufacturer at Chicago.

A. They did. His name is on the calendar.

Q. Do you not know the rate from Atlanta to Wilmington is 73 cents and the rate from Chicago to Wilmington is $1.25?

A. I know what the rates are.

Q. So the rate disadvantage did not deter the Coast Line.

A. Yes, sir, the rate disadvantage primarily on the inbound material is what affected that particular contract.

Q. Oh, then the question of raw materials is tremendously important.

A. Certainly it is in this instance.

Q. Don't you know, Mr. Hart, that the Southern carriers have been particularly liberal in helping their Southern shippers with respect to rates on raw material?

A. No, sir, not on the class or raw material I am talking about.

Q. Wouldn't you say the Southern carriers have been more than fair to the South?

A. Yes, I think the Southern carriers have done what they saw fit to do, but the problem we are confronted with [fol. 5291] is that we have got to deal with men in the Southern carriers' managements that do not have good judgment about the matter.

Q. And Southern industry has grown by leaps and bounds under those conditions?

A. Of course that is a cover-all statement. That is what you say it has, and we agree with you.

Q. I am quoting your exact language.

Mr. Norman: Read him the whole statement.

A. I didn't say——

By Mr. Clark:

Q. Didn't you just tell me that was true?

A. Of course the South is growing industrially, but it started from scratch, and you can't compare a growth from nothing as compared with some other market.

Q. Well, we all took the country from the Indians from scratch.

A. I agree with you.

Q. You say in your testimony, and I have heard it elsewhere, you said, "Past experiences are not indicative of revenue consequences that might conceivably flow from a readjustment in the present class rate structure in the South."

That is on page 36?

A. Yes, sir.

Q. Do I understand you think any rate adjustment should be definitely fixed for the future based on the present times and conditions?

[fol. 5292] A. Well, I wouldn't say they should be based on war conditions, but I think this Commission is pretty well informed as to what the conditions might be after the war.

We have got to forecast it. Certainly this Commission is in no different position, as I see it, than Congress over there legislating laws, and we have got to prepare for the future, and I think it is the duty of this Commission to forecast that future to the best of their ability.

Q. Isn't it true, Mr. Hart, that the manufacture and flow of traffic in ordinary civilian goods has been very much disrupted under war conditions?

A. Yes, sir.

Q. Today the traffic is largely of munitions of war and materials going in to make those munitions?

A. Yes. I wouldn't say a traffic test for instance today would be representative.

Q. There is quite a large volume of traffic of that kind moving today.

A. Yes, sir.

Q. That has not moved heretofore.

A. Yes, sir. It is moving on class rates today where under normal conditions it would not.

Q. You have no reason to suppose it will continue indefinitely.

A. No.

Q. So that today is not a representative period. It is more [fol. 5293] of an abnormal period.

A. That is correct.

Q. And yet you want the Commission to take today's views into consideration.

A. No, sir, I am not asking that they do that. I just got through stating that the Commission is well informed about conditions. There are just a lot of cover-all statements made by different witnesses about the low inbound rates on raw materials, and when you boil them down of course they did happen in the past, you got low rates on logs maybe, on pulpwood, and maybe a few low rates on pig iron, but that isn't what we are talking about here.

We appreciate that action by the Southern carriers in the past when these old lines of industry were building up, like the stove industry and when the paper industry came into the South, but I am talking about these new industries.

I mentioned this rolling mill, lead rolling mill in Atlanta. That mill is properly situated if they could get the proper inbound and outbound raw material rates.

We tried to make the Southern carriers put in the Baltimore rate to Atlanta on lead from the west. The best thing we got was to get the New York rate.

Baltimore is a keen competitor, and the Southern carriers are not liberal in many instances as they should be on these inbound raw material rates from other sections, particularly [fol. 5294] from Official territory.

I mentioned yesterday——

Commr. Aitchison: I think you have answered that question and a good many that have not been asked.

The Witness: Well, he asked me, Mr. Commissioner, about these raw material rates, and he didn't confine it to one. He had a broad question and I would like to tell him about some of them.

By Mr. Clark:

Q. Have you finished?

A. Yes.

Q. You recall you mentioned the rate on sterilized rags from Atlanta to New York State.

A. Yes, sir.

Q. You said it was a rate of 46 cents.

A. That was the rate the Southern Railway was willing to put in and I accepted it because I couldn't get anything better.

Q. All right, you were given a 46 cent rate?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. That was a reduction of the rate from 75 cents?

A. Yes, it was classification basis.

Q. And your man got the contract, didn't he?

A. He did after that rate was put in.

Q. Then you talked about another contract that ran [fol. 5295] away up into some figures, I forgot the details of that, but your man also got that contract.

A. I don't recall.

Q. It was right in connection with the rags.

A. I don't recall that.

Q. Well, never mind.

A. I recall saying he lost a contract—I don't know what you are referring to unless you would mention the commodity.

Q. You did mention at great length wines.

A. Yes.

Q. And you said there had been refusal by the Official Territory lines, I believe, to join in some wine rate that the Southern lines had proposed. Do you recall that?

A. Yes.

Q. From whom did you get information that the Northern lines had refused to join?

Mr. Norman: I don't think he said that. He said it was still non-concurred in by the Northern lines.

Mr. Clark: All right. He made a definite statement, Mr. Norman, that he had been denied——

Mr. Norman: No, he didn't, and the record will so show, and I challenge your statement.

Mr. Clark: Let's ask the witness if he recalls what he did say.

The Witness: The facts are, Mr. Clark, that before I [fol. 5296] left Atlanta I merely checked the proposal that was filed at the request of Mr. Oliver, and I was told by the Southern Freight Association that it still remained non-concurred in by the Official Territory, and I was merely checking the status just like I would ask about any other proposal.

By Mr. Clark:

Q. If in the earlier part of your testimony you said the Northern lines had refused to join, that was an error?

A. I wouldn't say it was an error. It was merely a choice of language. I will say so far as I know they have not concurred in the Southern Railway's proposal.

Q. Then if you said that they had refused, that was an error.

A. As to this proposal, yes, but I would apply that to previous proposals that have been before them for five years that they absolutely refused to concur in.

Q. Did you hear Mr. McDonald's testimony on yesterday?

A. Yes, sir.

Commr. Aitchison: That is the second time he has testified to that fact.

By Mr. Clark:

Q. I want to know clearly if you are speaking, as you do, for the Southern Governors and apparently the same interests that he spoke for in general, do you subscribe to the Official Territory level of rates within Southern Territory?

A. Not as a whole.

Q. You do not?

[fol. 5297] A. I was talking about class rates here, Mr. Clark, and I wish you would confine your questions to the scope of this proceeding.

I am not going to talk about pulpwood or pig iron or some other commodity. If you want to take each one down the list, I will tell you what we want.

Q. The Chairman has pointed out on more than one occasion that technically all rates and ratings are here, and I will take first class rates in and of themselves, leaving out exceptions, and I will ask you, are you in favor of the eastern scale of class rates being in effect in Southern Territory.

A. I will answer this way. If I had had to make a choice, I would take that in lieu of what I have. I am talking about as to class rates.

Q. You were questioned from the bench at length yesterday along this line, and I was much interested but could not hear your answers——

Commr. Aitchison: I think I will just have to ask if you cannot restrain yourselves so that only one is talking at a time. This reporter is trying to make a record here. It is impossible for any human being to report two people talking at once. Just, please, be a little bit considerate of each other and of the reporter and of us.

By Mr. Clark:

Q. Let's come back to the class rates specifically as class rates, and I will ask you definitely the question. [fol. 5298] Instead of the present class rates in Southern Territory are you advocating and do you desire the eastern class rate put in effect within Southern Territory?

A. I would say yes.

Q. Now, the class rates, I take it you agree with me, standing alone mean little without the classification.

A. That is true.

Q. If you have the eastern class rates do you advocate the Official classification or the Southern classification?

A. I think we would have to take the classification along with it. I don't see any escape from that, unless there was a new classification made.

Q. You recall on yesterday, when Mr. Chairman Aitchison asked you about that, you said there were three classifications and apparently you wanted a little of all three of them.

A. No, I don't think——

Q. (Interposing) Today are you clear that you want the Official classification in Southern Territory?

A. I didn't say I wanted. I just answered your question.

Commr. Aitchison: My question was whether he considered the Official classification was adapted to meet commercial needs of the South.

Mr. Clark: That is much better put, Mr. Chairman.

The Witness: I think the record is clear about the matter.

By Mr. Clark:

Q. You think then it is better adapted to the needs of [fol. 5299] Southern industry and shippers than the present classification?

A. Yes, I think so, under the present industrial evolution that is taking place I certainly do.

Q. That brings us to the interterritorial class rates. Do — wish the same eastern level to obtain interterritorially and in both directions?

A. Whatever the level is, we want it uniform both directions.

Q. And the Official classification?

A. If that is proper, yes.

Q. That is no answer. You are speaking for a large volume of interests here, and we have to ask you these things.

A. In answering those questions, of course I don't mean it facetiously at all, but it is a rather unfair question to ask a rate man just point blank whether we want this or that, I mean without testing some particular class of traffic that might be involved, but I am talking now generally.

Commr. Aitchison: Now, Mr. Clark, I recognize, of course, the questions in the form you are asking are rather common before the Commission as to what a witness wants, but really basically the witness is here to give his knowledge of the facts and his expert opinion, rather than the question of what he wants.

By Mr. Clark:

Q. Mr. Hart, will you bear in mind when I speak of what you want I mean those things that you think are [fol. 5300] best adapted to the industry. I am sure you understood me.

A. I don't know; sometime I think I understand you.

Commr. Aitchison: Well, if you don't know, that is enough.

By Mr. Clark:

Q. Then let's come back to it. You are speaking for Southern industry. That is a broad term, Southern shippers.

A. Yes, speaking for a good many Southern shippers.

Q. It is clear that you do want the eastern level of class rates and that classification as being best adapted to the needs of Southern territory.

A. I didn't put it that broad in my direct examination. I didn't advocate any particular level.

Someone asked me what I would suggest, and I said the appendix E scale was the best thing I had seen, and that is as far as I went.

Commr. Aitchison: I want to ask a question there. Bearing in mind the cases you cited yesterday, and in which you seemed to think the Commission had concurred, and possibly did, to what extent would your trouble be eliminated if the Commission would cease building rates on percentages of first class?

The Witness: Well, I would have no objection to that if a plan of that kind was adopted and a proper graded mileage basis was put in, it would suit me fine.

[fol. 5301] Commr. Aitchison: You say you haven't any objection to it. That is a pretty negative sort of statement. I asked what percentage of your troubles would be alleviated.

The Witness: It would be alleviated; of course it would depend upon the gradation of the scale.

Being primarily interested in longer haul traffic, if we had a proper banded scale, a scale that was properly banded, then it would suit us better than maybe a class rate adjustment that had a rather rapid progression in the index rate.

Commr. Aitchison: You are putting something in my question I didn't put there at all. My question didn't relate to the reformation of the scale. I was talking about stopping making rates on the basis of index 100, now.

Mr. Norman: Does your question contemplate leaving the class rates as they are, but just stop making the percentage of column rates?

Commr. Aitchison: My question was whether or not his present troubles would be alleviated if that practice was followed, to what extent they would be alleviated, if at all.

The Witness: Well, I don't know that I understand just what you have in mind.

Commr. Aitchison: You told us yesterday of a half dozen cases where you said you had gotten rates of 138 per cent of what your competitor had, simply because the Commission in prescribing rates had prescribed the [fol. 5302] same percentage on first class rates in the South as it had prescribed in the north.

The Witness: That is correct.

Commr. Aitchison: If instead of prescribing percentages of the first class rate, which you say is 138 per cent of the South as compared with the north, the Commission had prescribed actual scale rates which it found reasonable——

The Witness: (Interposing:) Yes, sir, I think that would take care of us.

Chmn. Alldredge: If there were still 38 per cent difference, would it take care of you?

The Witness: No, I am talking about the plan; I am not talking about a rate. That is the reason I emphasize my answer. Of course we would expect those rates to be relatively adjusted, of course.

Commr. Aitchison: What I got from the point of your objection was that because it is an easy and a convenient thing to do to refer rates to percentages of first class, that it is done oftentimes when it should not be done, and the result is, as you claim, an unjust rate.

The Witness: That is true. Of course the same injustice could be done——

Commr. Aitchison: (Interposing:) By prescribing a scale.

The Witness: By prescribing different scales; of course I realize that.

Commr. Aitchison: At least you would have the oppor-
[fol. 5303] tunity to compare that scale with scales elsewhere.

The Witness: Yes, sir.

By Mr. Clark:

Q. Before you leave class scales, you have given us the view here that you and your southern shippers are dissatisfied with the present class rates. You want something else, but you are not quite clear to tell us what. If pressed, you say, "I would take the eastern level of class rates."

A. Yes, sir.

Q. And the classification of Official Territory?

A. Yes, sir, we would take that.

Q. Are you making any distinction in your views with regard to appropriate rate levels between class rates as such and your commodity rate adjustment of the various commodities.

A. Well, Mr. Clark, commodity rates are not involved in this proceeding, and I haven't testified as to my position about rates on any particular class of traffic.

Q. The pertinency of my question, Mr. Hart, is this. If we have a certain class rate level, apparently you wish it substantially reduced; that would be my view.

A. No, I don't think so.

Q. If you want an eastern level.

A. I don't want to agree that the eastern level would reduce your revenue on class traffic.

Q. Then, my dear sir, what is the argument about the
[fol. 5304] difference in levels between Official and Southern Territory?

A. It is primarily the interterritorial, the barrier that is set up at the border which I complained about yesterday.

Q. Don't you think if we have interterritorial rates on the eastern level that we would have to have the same level in the South?

A. Yes, and I don't think if you took the eastern level today—tomorrow, I will put it,—and established it in the South as a whole I doubt if it would change your revenue very materially.

Q. Wait a minute. You agree with me though that the eastern level would have to become effective inevitably within the Southern Territory.

A. Yes.

Q. And now you say that wouldn't affect the revenue.

A. It would affect it some; how much I don't know, but it would not be material.

Q. Do you recall Mr. Kerr said it would be about $39,000,000 probably; you disagree with him?

A. Yes, because he didn't prove that at all and offered no support of that opinion.

Q. You know Dr. Edwards, of course, here?

A. Yes.

Q. Of the Commission's staff?

A. Yes.

[fol. 5305] Q. Do you recall he said there would be approximately $23,000 lost to the southern lines?

A. I don't know.

Commr. Aitchison: Are you going to argue this case right now, Mr. Clark?

Mr. Clark: No, sir. I asked him if he subscribed to the view and he said it wouldn't make any difference.

Commr. Aitchison: That ought to be enough.

By Mr. Clark:

Q. Let's come back to your commodity rates. If you cannot get money out of your class rate structure, don't you have to do something to your commodity rates?

A. You can't sell me on that idea.

Q. I am not trying to sell you, sir; I am asking you a simple question.

A. I am not going to discuss the commodity rates unless you insist on it. I will be glad to do it if the Commission wants to go into it.

Commr. Aitchison: What is the question?

(Pending question read.)

Commr. Aitchison: I think we don't have to have elementary transportation economics developed to such an extent on cross examination, Mr. Clark.

Mr. Clark: Strange to say, Mr. Chairman, that is the question he refused to answer. It is quite interesting to me, because we are interested in conducting a railroad trans-
[fol. 5306] portation system in the South, and it is obvious we must have money to do it. I am sorry if it is thought that it is elementary.

Commr. Aitchison: I confess I think you are going a little bit too far in assuming that we don't any of us have any experience or knowledge of such elementary matters.

Mr. Clark: There is no such assumption to the bench. I was trying to get the witness,——

Commr. Aitchison: But it is the bench that is going to decide this question.

By Mr. Clark:

Q. Mr. Hart, you are here speaking for the Atlanta Freight Bureau, the Governors' Conference, is that right?

A. Yes, and the other southern traffic organizations, all of them except New Orleans.

Q. I don't recall. It is of course in the record, but you have left us under the impression that you speak rather generally for industry in the South. Is that right?

A. Well, I think that is in a general sense, true, yes, sir. Of course I am not speaking for certain groups like the paper group or the iron and steel group, who have their own people who have made statements here, I think.

Of course I have some heavy interests as well as light interests, and I am speaking for those specifically and generally of the smaller unorganized industries.

[fol. 5307] Commr. McConnaughey: Mr. Hart, I am very much interested in what portion of the dollar value you think you represent in the South that you are speaking for.

The Witness: You mean dollar value of products?

Commr. McConnaughey: That is right.

The Witness: Of course when you take the coal and iron and steel and paper, that is a pretty large industry in dollars and cents, but I am concerned about the smaller fabricator who can't expand under this rate structure.

Commr. McConnaughey: Could you give me a direct answer?

The Witness: No, I couldn't. I would have to make some figures, but offhand, the dollar value, probably they would be greater than iron and steel and coal and paper, but I don't know, but as to total the percentage against me would not be very great.

Commr. McConnaughey: You referred to the rubber industry a while ago, which as you know left Akron to some extent, Goodyear and Goodrich and Firestone.

The Witness: Yes.

Commr. McConnaughey: And went to Michigan and Texas and a number of southern states. Do you think freight rates had anything to do with their moving to those parts of the country?

The Witness: No, I think it was an economic consideration but still when they get these factories—a man that locates a branch factory of that type and he gets into the terri- [fol. 5308] tory, things develop that might change his entire set-up. It just isn't constant. Changed conditions cause changes in the plans originally made, and I don't think, for instance, that Goodyear intended to do other than have a local distribution in the South, for instance, out of their Gadsden plant, but the facts are that prior to the war they were shipping into eastern territory, for instance. They found after they got down there they could probably manufacture a particular class of tire that had been developed for a certain purpose and they found it more economical to produce that tire in the Gadsden plant, rather than in the Akron plant.

That causes a demand for rates that was not foreseen at the time that plant was put there. We have that to happen very often. You can't foresee what is going to take place when you build a new plant.

By Mr. Clark:

Q. Pursuing the question from the bench just a little further, you do not represent and speak for the coal interests.

A. No, we have no coal in Georgia.

Q. And iron and steel.

A. Yes, sir, I speak for the Atlanta steel interests, but not the Birmingham steel interests.

Q. Do you speak for Knoxville?

A. No, sir.

Q. Chattanooga.

[fol. 5309] A. There is a small steel mill at Knoxville.

Q. Chattanooga?

A. Not at Chattanooga.

Q. Gadsden?

A. Yes, sir, there is.

Q. Tallahassee?

A. Yes.

Q. Anniston?

A. Those are controlled by the Big Four in the north.

Q. You do not speak for the paper industry?

A. No.

Q. Except the Atlanta Paper Company.

A. I only speak for the fabricator primarily. We have no paper mills.

Q. Fertilizer?

A. Well, fertilizer is not involved—yes, I represent some fertilizers.

Q. Not the industry though in the South as a whole.

A. Not as a whole. They have their own organization.

Q. Automobiles?

A. There are no automobiles manufactured in the South. There was a manufacturer there at one time in Atlanta, but they had to give up.

Q. They ship them into the South?

A. Yes, they ship automobiles from the north into the South.

[fol. 5310] Q. And interterritorially.

A. Southbound, yes. They drive most of them.

Q. Let's take specific industries right now by name. Do you speak for Sears Roebuck?

A. Well, Mr. Clark, if you want this record to show who I speak for I will be glad to file a list of them and satisfy you.

Q. I didn't ask you that question. Do you speak for Sears Roebuck?

A. No.

Q. How about the Chevrolet people?

A. No.

Q. How about Fisher Body?

A. No, sir . . .

Q. How about Fulton Bag and Cotton Mill?

A. They have their own traffic men but they are in accord with our——

Q: (Interposing): I didn't ask that. Do you speak for them?

A. I don't speak specifically for them.

Commr. Aitchison: Mr. Clark, the function of a witness is to be a witness for the Commission. You asked him for whom he speaks; that question properly should be addressed to Mr. Norman.

Mr. Clark: Mr. Commissioner, he is the only man the southern manufacturers have put up that we can find out [fol. 5311] who he is talking about.

Commr. Aitchison: Who he is called for is for Mr. Norman to say.

Mr. Clark: Then I will ask you, Mr. Norman, who are you talking about when you give these various views?

Mr. Norman: He is talking about the South. He is not talking about any particular industry.

Mr. Clark: He has spoken of industry in the South, and that is an all inclusive term, and the point has been made that there is nobody disagreeing with this view of the Southern Governors and there has been evidence that Mr. Wardell and Mr. Vogtle are in the great minority, and I want to know whether he speaks for these industries I am asking about.

Commr. Aitchison: You shouldn't ask whether he is speaking for them. You should ask whether or not when he testified with respect to the views of industry, as he understands it, whether there is a complaint or not, he had in mind such and such an industry.

By Mr. Clark:

Q: You heard the question from the bench, Mr. Hart, and I am going to ask you to answer that question, in the light of these industries: Hercules Powder.

A. No.

Q. Southern Agricultural Chemical.

A. No.

Q. Exposition Cotton Mills.

[fol. 5312] A. They are in the textile group—yes. I have been authorized by the Alabama and Georgia textile mills.

Q. Mr. Kilgore is the traffic manager?

A. No, Mr. Murphy is the traffic manager and he is right here.

Q. Do you speak for Mr. Cunningham and his association?
A. No, sir, I certainly do not.

Q. He represents most of the textiles in the Piedmont section, doesn't he?
A. No, sir.

Q. He does not?
A. The Piedmont section, yes.

Q. You don't speak for him?
A. No.

Q. How about Southern Cottonseed Oil Company?
A. They are a northern controlled group.

Q. How about Swift & Company?
A. A northern controlled group.

Commr. Aitchison: That isn't the question.

The Witness: I told on the record yesterday, I said in qualifying, I said that these outside industries, there are a good many of them that I don't speak for.

Commr. Aitchison: He is trying to develop what they are.

The Witness: And their rates are not involved in this proceeding at all, and there wouldn't be any reason for me to speak for them.

[fol. 5313] Commr. Aitchison: That is not important. The question is whether or not when you were testifying with respect to the views of the South you meant the views of such and such an industry. That is capable of an extremely simple answer.

The Witness: Mr. Aitchison, it is, I agree with you, but Mr. Clark's purpose—or I mean I am interpreting his purpose——

Commr. Aitchison (Interposing): Mr. Norman is going to have a chance later to develop, if he wants to and thinks it is important, but your function is to answer and answer directly, and let's get on with this.

Mr. Norman: Mr. Chairman, I don't think it is competent for him to ask the witness if he speaks for some industry or some special group whose rates are not involved here. Why should he speak for them? Why should anybody speak for them?

He is asking this witness, do you speak for a concern whose rates are not involved here, and he is just going right down the line to make it appear that there are all these big companies that he doesn't speak for. Of course

nobody speaks for them here because they are not interested.

Commr. Aitchison: I don't think you are quite right about that. Considering the nature of the testimony we have had here, it seems to me it is proper that Mr. Clark should follow this line within reasonable limits, of course subject to the ruling that Mr. Clark keeps on violating, that he isn't to ask the witness for whom he is speaking.

[fol. 5314] Mr. Clark: I asked him to answer the question in your words. You put it better than I could.

By Mr. Clark:

Q. I will give the name of the industry; you know what we are talking about.

A. Yes, and you know who I am talking for too.

Q. How about the lumber interests?

A. I represent some lumber people, and to the extent that I represent them I am talking for them.

Q. That means some local concern like Willingham.

A. No, I represent some major ones too.

Q. You also represent such concerns as Davidson-Paxton?

A. I represent all the retail people.

Q. That is really your main representation?

A. No, sir, it is not.

Q. Your main membership?

A. No, sir, it is not. That is the smallest membership we have in the organization is the retail stores.

Q. And yet, Mr. Hart, you must understand you are here speaking for the Southern Governors of several of the states.

A. You are not going to tell me who I am speaking for.

Mr. Norman: He is not speaking for the Southern Governors. He is testifying as a witness offered by me as counsel for the Southern Governors.

Mr. Clark: We can only ask the witness; we can't ask counsel.

[fol. 5315] Commr. Aitchison: Yes, you can ask Mr. Norman on whose behalf this witness is called.

Mr. Clark: Yes, I would like to have you say.

Commr. Aitchison: He answered it once. He said he was called on behalf of the Southern Governors.

Mr. Clark: I didn't hear it.

By Mr. Clark:

Q. Let's come back to the civic organizations of Atlanta. Are you familiar with such organizations as the Chamber of Commerce?

A. Yes, sir.

Q. The Junior Chamber of Commerce?

A. Oh, yes, they have them in every city.

Q. How about the Optimists Club?

A. They have one there.

Q. The Civitan?

A. Yes, we have a Civitan.

Commr. Aitchison: Are these shippers?

Mr. Clark: I don't know.

Commr. Aitchison: You ought not to bring them in unless they are. You will be speaking about the Confederate Veterans next.

Mr. Clark: Well, that is a good idea.

By Mr. Clark:

Q. You don't speak for the Confederate Veterans.

[fol. 5316] A. Well, I might; you don't know.

Q. Are they shippers?

Mr. Norman: Mr. Chairman, to follow this thing to its logical conclusion we ought to have an election. I don't see how you are going to get any place if it can't be said that the public officials represent a section, and if you want to go back of that and find out what the people think, you have got to have an election. I think to give Mr. Clark what he wants we will just have to have an election.

Mr. Clark: Maybe we will some day. The Governors have threatened it. That is all.

Commr. Aitchison: Any further cross examination of Mr. Hart?

Mr. Grubbs: Yes, sir.

Commr. Aitchison: Mr. Grubbs.

Cross-examination.

By Mr. Grubbs:

Q. I believe you testified yesterday that no mattresses were manufactured at and shipped from Birmingham.

A. Oh, well, there is a small mattress factory, but there isn't a commercial plant as we know it.

You have small mattress plants all over the country. You will find small mattress plants located all over the country, but I am talking about plants that produce mattresses for marketing purposes generally.

Q. Mr. Hart, I place before you Exhibit 84 produced by [fol. 5317] the witness Edwards—not Dr. Edwards—in this proceeding, showing the rates on mattresses from Birmingham as compared with the rates on mattresses from Chicago, and I will ask you if you didn't prepare this exhibit.

A. Yes, I prepared it.

Q. Are you preparing just paper rates to submit to the Commission in this proceeding?

A. No, it wasn't prepared for that purpose.

Q. Now, you assailed in your written testimony at some length section 1 of Exhibit 180 presented by the witness Morris.

A. Yes, sir.

Q. I want to read you just one line from the testimony, this being taken from page 4037, the testimony being that of witness Morris:

> "I have undertaken to show here what the effect would be upon the southern commodity rate structure confining it to the column rates and exceptions of the prescription of the Appendix E scale, the Official Territory scale, with either the Official Classification ratings or the present Exception ratings."

Do you recall that statement by witness Morris?

A. Yes, sir.

Q. Is that statement perfectly clear to you?

A. No, sir, it isn't clear—perfectly clear—and I don't [fol. 5318] think it would be clear to anyone when you examine the exhibit as to what it was intended to show.

Q. Isn't it true that all your criticism is based on the assumption that Mr. Morris did not say, "Confining it to the column rates and exceptions"?

A. I think the record would——

Q. (Interposing:) Isn't it true? That is all I asked you.

A. I will say yes, if that satisfies you.

Q. That satisfies me.

In the course of your written testimony you indicated that the southbound movement is largely in forwarder cars. Is that correct?

A. Well, I said——

Q. (Interposing:) Is it correct?

A. Yes—I didn't say all of it was in forwarder cars. I said——

Q. (Interposing:) What is your statement?

A. I think the statement would be that there is an important—well, I can't give you the percentage, I wouldn't want to guess at the percentage, but there is a very large tonnage of southbound less than carload traffic that is handled by the freight forwarders. I told you there *was* 9,000 cars in the year I took of foreign traffic from Central Territory into the South.

Q. You don't mean the Southern Railway is not moving [fol. 5319] large quantities of less carload freight in their own package cars?

A. Well, they still operate in package cars.

Q. Do you or do you not?

A. I wouldn't say large quantities. I don't know what you mean by large quantities. Are you talking about relatively as related to the——

Q. (Interposing:) I simply want to know what you meant when you said that the railroads' less carload movement is going largely by forwarder.

A. It is.

Commr. Aitchison: I think that was to Atlanta, wasn't it?

The Witness: Yes, to Atlanta; I can say that for Atlanta.

Commr. Aitchison: I am asking Mr. Grubbs.

The Witness: I thought you were asking me.

Commr. Aitchison: No.

Mr. Grubbs: It was my understanding the witness' testimony was broader than that. Am I correct in that understanding?

The Witness: I will say, of course I don't know exactly what goes into Memphis or into Birmingham or into New Orleans; I am not in position to test it, but I have tested it at Atlanta, and that is the largest receiving point in the South.

By Mr. Grubbs:

Q. Are you in position to indicate to us the extent of forwarder movement as compared to the extent of movement other than by forwarder?

A. I would say that the——

[fol. 5320] Q. (Interposing:) Are you or not? That is the question.

A. Yes, the preponderance of movement into Atlanta of merchandise traffic is by the forwarder.

Q. Are you in position to give any figures on it?

A. I haven't them here. I have some.

Q. Are you confining yourself altogether now to Atlanta?

A. Yes, sir.

Q. Are you in position to indicate to us the proportion of total southbound less carload traffic that moves by forwarder?

A. Well——

Q. (Interposing:) Are you?

A. Yes, if I had the figures here I could give it to you.

Q. Do you have the figures?

A. Yes, sir.

Q. Can you give them to us?

A. I guess I could.

Q. Let's have them.

A. I haven't got them with me.

Q. I thought you said you did.

A. No; I know approximately what it is. It runs well over 50 per cent, without naming a figure.

Q. You say the total southbound movement——

A. (Interposing:) Of merchandise traffic.

Q. Of merchandise traffic is 50 per cent——

A. (Interposing:) Or more, by forwarder.

[fol. 5321] Q. Mr. Hart, you participated in this general case involving forwarder rates here, the all commodity rates in the South recently?

A. Are you talking about the general case or the I. and S. case?

Q. I am talking about the general case.

A. Yes, sir.

Q. And isn't it true that every witness for the railroad there testified——

Commr. Aitchison: No; no.

Mr. Grubbs: Very well. I will withdraw that.

By Mr. Grubbs:

Q. Mr. Hart, you don't mean to represent that carload traffic that moves on class rates southbound is moving by forwarder, do you?

A. No, I was talking about merchandise traffic.

Q. You are talking about less carload traffic.

A. You know what I mean.

Q. You didn't say it and I want to clear the record.

A. I think the Commission understands what we are talking about.

Commr. Aitchison: I know, but some United States Judge may not.

The Witness: Yes, I am talking about less carload merchandise traffic, what we call consolidated traffic.

By Mr. Grubbs:

Q. Mr. Hart, I wish you would turn to sheet 5 of your [fol. 5322] Exhibit 220.

First of all, I would like to direct your attention to the column headed "Percentage of Official Territory Level".

A. Yes, sir.

Q. Do you mean to represent to the Commission in this proceeding that the K-2 Q-1 basis between the South and Official Territory as a whole is generally no higher than the K-2 scale?

A. I don't think the exhibit has any such thing on there, but if you want to ask me that question, I will be glad to answer you.

Q. I think your figure, when you show that the interterritorial level, that is the level from the South to Official Territory, when you show it to be 138 per cent, I think the implication is there that the K-2 Q-1 basis is no lower than the K-2 scale. Isn't that true?

A. That isn't what you said, but I explained that yesterday that this is just a general test and you can take one point and it would be under the scale, and another point and it would be over it, but just as a general test it is fairly accurate.

Commr. Aitchison: You left the impression in answer to a question of mine that the combination of the K-2 and Q-1 scales from representative points in the South to points in the North would average about the K-2 scale. [fol. 5323] The Witness: They would for Central Territory. I said to you that as to Trunk Line Territory it would be something less than that.

Mr. Grubbs is including all Official Territory.

By Mr. Grubbs:

Q. The reason I did so is because your exhibit is headed, "A Comparison of the General Level of Freight Rates Expressed in Percentages to the First Class Rate Level Applicable on These Commodities Intraterritorially in Southern and Official Territories."

Your exhibit doesn't say anything about Central Territory.

A. In answer to Mr. Aitchison I said if we took all the origins in Southern Territory to all Official Territory, I am talking about including New England and all the destinations in Official Territory, and measured them by the K-2 scale, you might reach 135 or 136 or some figure like that; it would not be exactly 138.

Q. Have you made any such calculation and have you arrived at any such result?

A. I have made a lot of studies since 13494. I have tested it pretty fully. I haven't filed it here.

Commr. Aitchison: The answer is this, then, Mr. Hart, that you are testifying from results of a good many years of experience with these and you are not testifying from any special study that was made.

The Witness: That is correct. In section 3-B of my [fol. 5324] Exhibit 88, Mr. Aitchison, you will find I separated Central Territory from Trunk Line Territory, and I found there that the Commission was about correct—I give the Commission credit one time for being right—that the general level of first class from the South to Trunk Line in New England was about 92 per cent of the K-2 scale and I used that figure in showing the relationship in this other exhibit. I wanted to be fair about it. I don't want to be unfair about it.

By Mr. Grubbs:

Q. If you are going to be fair about it you ought to strike out wherever you have shown Official Territory here, and substitute Central Territory.

A. I can rework and take 92 per cent of those figures and show Trunk Line, but for the purpose of this exhibit it did not appear necessary.

Q. If it is going to be confined to Official Territory, as you show it here, then all the figures you have shown

under percentage of Official Territory level must be discounted. That is true, isn't it?

A. No, I don't want to discount it at all. If it means anything to you, I am willing to confine it to C.F.A. and I.F.A.; it would suit my purpose just as well.

Q. Let's test your general knowledge for a moment on this percentage. You know that the Commission subsequent to the Southern Class Rate Case materially reduced rates from some parts of the South to Official Territory, don't you?

[fol. 5325] A. Yes, in the border cases I know they reduced them interterritorially.

Q. And the percentage from Kentucky and North Carolina is very much lower than 38 per cent.

A. Yes, sir.

Q. And substantial movements take place from and to Kentucky and North Carolina.

A. Yes, I think that is true, Mr. Grubbs, I will concede that.

Q. That isn't taken into account when you use this 38 figure, is it?

A. Yes, sir, it was taken into account in this other as to C.F.A. territory, yes.

Q. You mean to say that the Kentucky rates and the North Carolina rates are taken into account in arriving at a figure of 138.

A. Well, if you will refer to sheet 3, section 2 of my Exhibit 88, you will find where I have shown there a great many southern origins or destinations, whatever you want to term them, have shown to the extent in which the first class rates are over or under the K-2 scale. That gives you a fair test.

Q. That isn't an answer to my question.

My question is, have you given adequate consideration to the Kentucky and North Carolina rates in determining [fol. 5326] this figure of 138 where the ratings are the same in both territories?

A. Yes.

Q. Are you willing to stake your judgment as a traffic man on that? Are you or not?

Commr. Aitchison: He doesn't have to stake his reputation.

The Witness: I made——.

Commr. Aitchison: Now, we have no question before us.

By Mr. Grubbs:

Q. Going back just a minute, I overlooked asking you if it isn't true that from the east to the south the railroads do not have *in* forwarder rates?

A. No, sir. The forwarder traffic, for instance, from the east to Atlanta moves by truck and it is a very large volume.

Q. But I am speaking about railroad tonnage now. There is no railroad tonnage from the east; that is correct, isn't it?

A. That is correct. Since the boats went out, the all rail routes are handling considerable merchandise traffic into the south.

Q. Now, Mr. Hart, I want to ask you a few questions about each of these commodities on page 5 of Exhibit 220 that you indicated you conceive to be in the case.

The first of those is calendars.

A. Yes, sir.

Q. Do you know how many manufacturers of calendars there are in the South?

[fol. 5327] A. Well, of course every printing plant is a potential manufacturer of calendars.

Q. My question was simply do you know how many there are in the South?

A. I don't know. I think perhaps Nashville and Atlanta printers are the only ones that have attempted to get into that particular character of printing.

Q. You say the only printers of calendars in the South are at Nashville and Atlanta?

A. I think they are the only ones that have attempted to get into that line of printing.

Q. What is the name of the Atlanta calendar manufacturer?

A. Dittler Brothers.

Q. How long have they been in existence?

A. I guess 30 or 40 years.

Q. How long have they been shipping calendars in carloads?

A. Only that one contract they had with the Gulf Refining Company.

Q. When was that contract entered into?

A. I think it was 1941; it was either 1940 or 1941.

Q. And that was for a shipment of calendars to go to where?

A. To go to different distributing points in the north. I gave you a list of them yesterday. It is in the record.

Q. It is in the record?

A. Yes, sir.

[fol. 5328] Q. Do they ship in carload quantities within the South?

A. No, sir.

Q. Coming next to the electrical appliances, who is the manufacturer?

A. Walker Electric Company. The catalog was here yesterday.

Q. The Walker Electric Company, and what is the principal commodity shipped by the Walker Electric Company?

A. Outlet boxes manufactured from iron and steel and aluminum.

Q. How long has that concern been in business?

A. Ten years, but they haven't been manufacturing boxes that long.

Q. How long?

A. Several years; I don't know the exact time.

Q. What was their sales volume say three years ago?

A. I can't give you that at the moment.

Q. Do you know what it is today?

A. No, I haven't those figures with me.

Q. Do you know how much of their production is sold in Southern Territory?

A. Most all of it at the present time. They tried to go into Official Territory.

Q. What parts of Southern Territory do they reach?

A. All of it.

Q. Do they ship throughout the South?

A. Yes.

[fol. 5329] Q. How many shipments have they made?

A. I don't know.

Commr. Aitchison: Is it necessary to go into the business of a particular shipper?

Mr. Grubbs: I was trying to test his knowledge, he having testified, your Honor, as to the economic conditions of these several industries.

Commr. Aitchison: We will not permit you to do it under Section 20 of the Act.

The Witness: I was not prepared to go into that here.

Commr. Aitchison: You don't have to. I have ruled the question is not proper.

Mr. Grubbs: Thank you very much.

Commr. Aitchison: Any further cross-examination?

Mr. McCollester: Yes, I have some questions.

Commr. Aitchison: Mr. McCollester.

Cross-examination.

By Mr. McCollester:

Q. Would the alleged grievances of those concerning whom you have testified be satisfied if — class rates in Official Territory and the classification in Official Territory were put on the Southern basis and the interterritorial rates made on the Southern basis?

A. Yes.

Q. Do you seek to have parity accomplished in that way?

A. No.

[fol. 5330] Q. Would that have the effect of increasing the levels of the interterritorial rates both northbound and southbound?

A. Well, I would say substantially northbound, but to a lesser degree southbound.

Q. How about the class rates?

A. I am talking about class rates.

Q. But it would also increase southbound to some extent?

A. Sometimes, yes; particularly to border territory.

Q. Just so that I may be sure that the record is clear on that point, from the standpoint of my interests in the case, may we understand that sheet 5 of your Exhibit 220 does not fairly reflect the ratio of the level of the class rates or of the rates there shown from the South to Official Territory in relation to the level of the rates on the same commodities or same classes within Official Territory?

A. I wouldn't say it doesn't fairly do that for the purpose that I have prepared the exhibit.

I have explained that, that I recognize the fact that this is a general comparison, you understand, Mr. McCollester, and I think if you include Trunk Line territory in New England those figures would have to go down a bit, but it wouldn't be enough to mean anything to me, because if we had 130 per cent it would be just as objectionable as 138 per cent.

Q. Which exhibit more fairly reflects the ratio of the inter-territorial level to the official level, sheet 5 of your Exhibit [fol. 5331] 220 or sheet 16 of section 11 of your Exhibit 88?

A. The latter would be more nearly the similar figures because I have separated the territories from which rate structure is entirely different.

Q. And will you take my word for it that the latter, that is, sheet 16 of section 11 of Exhibit 88 out of 34 rates shows only 4 with the ratio where it is as high as 138 per cent.

A. What sheet are you referring to?

Q. Sheet 16, section 11.

Mr. Norman: We will take your word for it, subject to check.

Mr. McCollester: All right.

The Witness: You mean section 2, don't you?

By Mr. McCollester:

Q. It looks like section 11; maybe it is supposed to be a Roman II Is that figure 2 or 11?

A. It is a 2, it is a Roman II.

I think the exhibit itself shows that, but as I recall it that exhibit was prepared for an entirely different purpose and has a very limited number of points.

Q. Does the truth depend upon the purpose of an exhibit?

A. Of course the figures are on that exhibit and show what the percentage is. I am not denying that your statement is correct on that particular sheet of 16 points.

Q. On page 33 of your prepared statement, where you deal with the subject of History, you make the statement [fol. 5332] that it has been said that the invention of the cotton gin by Eli Whitney in 1793 changed the South's destiny from that of industry to that of agriculture.

Can you refer me to any publication, any authority in history, where that has been said?

Commr. Aitchison: I can. I was reading it last night.

Mr. McCollester: I would like to have it in the record.

Commr. Aitchison: In one of these 25 cent editions of the history of the United States that was just gotten out.

Mr. McCollester: By whom?

Commr. Aitchison: I don't know.

Mr. McCollester: I think it is about a 25 cent statement.

Commr. Aitchison: It is by a couple of eminent historians. I could supply the name if you like.

The Witness: Well, you are entitled to your opinion.

By Mr. McCollester:

Q. Well, the invention of the cotton gin also lead to the same extent to the industrialization of New England, did it not?

A. It probably did.

Q. And the South had the same opportunity to employ the cotton gin for ginning right in the South.

A. I think if you read my statement you know what I mean. I think it is perfectly clear and it is a truthful statement.

Q. To what extent was the South industrialized in 1793?

A. I would have to go back of course in history and get that.

[fol. 5333] Q. You have made the statement.

Commr. Aitchison: We are as able to take official notice of things of that sort as this witness is to testify about them.

Mr. McCollester: That is all.

Commr. Aitchison: Any further cross-examination of Mr. Hart?

(No response.)

Commr. Aitchison: Mr. Norman, do you have any further questions?

Mr. Norman: Just one.

Redirect examination.

By Mr. Norman:

Q. Mr. Hart, you were asked about representing the textile industry in Georgia and Alabama.

That industry has a complaint pending before the Commission, has it not?

A. Yes, sir.

Q. And you didn't mean you were representing them in that they were trying to get their relief here instead of there, did you?

A. No, I meant to say that so far as the Georgia and Alabama mills were concerned, they were certainly in

sympathy with what we were trying to do. That was what I intended to convey.

Of course I was a witness in I. and S. 3636, and I know pretty well their position.

[fol. 5334] Mr. McDonald: Could I ask the witness a question?

Mr. Hart, do you understand in speaking for the Southeastern Association of Railroad and Utilities Commissioners that I advocated the present commodity rate structure within the North within the South?

The Witness: No, Mr. McDonald, I didn't understand it that way.

By Mr. McDonald:

Q. When Mr. Clark, in interrogating you, sought to secure your concurrence in any such interpretation as that, did you intend to concur?

A. I didn't concur.

Q. And were not my questions relating solely to the present class rate adjustment which had been proposed by the Rate Committee in this case?

A. I thought that was what you had in mind.

Q. And your response as to whether or not you represented Sear- Roebuck, isn't it a fact that General Wood, president of Sears Roebuck, resigned from the Chicago Chamber of Commerce because that Chamber was resisting the South's effort to secure uniformity?

A. I am not familiar with that.

Q. Don't you know Mr. Charles Waters, vice president of Sears Roebuck, has appeared on the Governors Conference many times and has made speeches advocating uniformity?

Commr. Aitchison: We will give you a subpoena for [fol. 5335] that genleman, if you want it.

By Mr. McDonald:

Q. In your response that you do not represent the specific businesses and industries named, isn't it true you do represent the sentiment of the smaller shippers in the South?

A. I certainly think so. I certainly know I represent my own interests, and I know what their sentiment is, and I think the sentiment is pretty generally that way throughout the South.

I have a very intimate contact with the shipper interests throughout the South, not only in Atlanta, and I think I am qualified to answer that in the affirmative.

Mr. McDonald: Thank you.

Mr. Clark: One more queston.

Recross examination.

By Mr. Clark:

Q. Do I understand correctly that in advocating the eastern level within the South and interterritorial application, that is conditioned upon retaining your present commodity rate adjustments?

A. No, I wouldn't say that. Of course when you say "commodity rate adjustment" that is a broad term, Mr. Clark; that means a lot of things.

You have got me confused now as to what you call commodity rates.

Your witnesses say percentage column rates in one instance are commodity rates, and in another instance they [fol. 5336] are not; I don't know what you are talking about.

Q. Commodity rates, as such.

A. What do you mean by that?

Q. Well, we will just——

A. (Interposing) Give me a commodity.

Q. We will call them column rates. Would that make it clearer?

A. Yes.

Q. Including all except the classification.

A. I think that would have to be reexamined.

Q. Reexamined?

A. And maybe some of them would have to be changed.

Q. Are you willing to have these rates increased?

A. I don't know until I test them, until we got to that class of traffic and it may be we would and maybe we wouldn't.

Q. Is it true if you can get your class rate structure reduced and into effect, you will oppose every increase on any commodity rate that you presently have?

A. I haven't done it in the past. You came along after 13494 and increased every one of them.

Q. Wouldn't that be your position in the future?

Commr. Aitchison: I think that is a little speculative.

The Witness: It would depend upon the needs of the industry.

Commr. Aitchison: Mr. Hart, when I am trying to rule that the question is one that you need not answer, don't go ahead and answer it.

You are excused.

The Witness: Thank you, sir.

Mr. Murphy: I would like to ask one question.

Commr. Aitchison: What is your name?

Mr. Murphy: Murphy.

Commr. Aitchison: For whom are you appearing?

Mr. Murphy: Georgia and Alabama Textile Association.

Recross-examination.

By Mr. Murphy:

Q. Mr. Hart, in making reference to the Association, you were connected with the 3636 case and the reopened case for the Association; I believe that is correct.

A. Yes, sir, I testified for the mills in those cases.

Q. As to the statement made here, you confine that for the purpose of clearing any understanding that might be gotten out of some previous testimony that the mills were satisfied with the rates. Isn't that correct?

A. Well, yes, I had reference to the policy more than anything else of the Alabama and Georgia Textile Mills, or their sympathy with this particular proceeding.

Q. I mean though by this, that we are not—you don't mean to say you were authorized to say we were participating in this case, but just to say that as to the industry being satisfied would be borne out in 3636; isn't that correct?

A. Well, I would say that is correct.

[fol. 5338] Mr. Murphy: Thank you.

Commr. Aitchison: There seems to be nothing further and you are excused, Mr. Hart.

(Witness excused.)

Mr. Wagner: If the Commission please, may I renew my request to either read into the record or have copied into the record five sentences from the Bureau of Census report which was referred to before? The parties on this side of the table have no objection.

Commr. Aitchison: It may be copied in.

(The statement from the Bureau of Census report is as follows:)

"While the quantity of goods produced is, for most purposes, a suitable standard for measuring industrial expansion or contraction, the conversion of quantities of dissimilar products to a common basis by means of index numbers is too laborious for application to small areas. Increases or decreases by physical quantities of goods manufactured may not parallel closely corresponding increases or decreases of wage jobs, for the extent to which machines are employed may determine largely the amount of human labor required. For example, about 15 per cent fewer wage earners were employed in the manufacture of cotton goods in 1929 than in 1919, although the physical volume of output increased by an estimated 30 per cent. The meat packing industry, too, employed 24 per cent fewer wage earners in 1929 than in 1919, but increased its physical output of products by approximately 5 per cent. The index of physical output of all manufactures increased about 38 per cent from 1919 to 1929, while the number of wage jobs decreased almost 2 per cent."

[fol. 5339]

J. T. RYAN was sworn and testified as follows:

Direct examination.

By Mr. Norman:

Q. Mr. Ryan, state your name, address, experience and qualifications.

A. My name is J. T. Ryan. I am executive vice president of the Southern Furniture Manufacturers Association, with headquarters at High Point, North Carolina.

The Southern Furniture Manufacturers Association is a voluntary unincorporated association of furniture manufacturers in the 13 Southern states.

From January 1, 1912 to November, 1942, I was secretary and treasurer of the organization, and was made executive vice president last November.

During all of these years we have maintained a traffic department, and I have actively represented our members

in proceedings before this Commission, before railroad rate committees, and other bodies having to do with freight rate adjustments.

[fol. 5340] Q. What is the purpose of your appearance here?

A. I appear in rebuttal to certain statements which I understand have been made in the record, to the effect that the southern industry is not supporting the effort to bring about an equality of class freight rates, and also that the Official classification carriers since the decision in the so-called Southern Governors Commodity Rate Case have not declined to join in the establishment of competitive commodity rates from the South into Official Territory.

Q. Please briefly describe the adjustment of furniture rates.

A. Generally speaking, today the furniture rates are published as exceptions to the various classifications and class rate tariffs in the form of numbered classes, percentages of first class as class rates, and also percentages of first class stated in the tariffs as commodity rates.

However, in most instances exceptions provide for the alternative application with a classification basis proper so that the classification basis proper represents the maximum rates.

It is a fact that since 1932 that generally speaking the rates on furniture, with a few minor exceptions, are determined with direct relationship to the first class rates.

It is therefore apparent that the Southern furniture industry is greatly interested in the level of the first class rates, because it is the basis for determining the rates on furniture.

[fol. 5341] Q. What would be the effect on your adjustment of the parity of first class rates?

A. One of the greatest obstacles that stands in the way of bringing about a proper adjustment of furniture rates is the maladjustment in the first class rate, particularly the southern first class rates as compared with the Official territory first class rates.

The rates on furniture from the Southern Territory as a whole are too high, relatively, when compared with the level of rates in Official Territory for equivalent service.

Consequently, I favor a complete competitive adjustment of rates on furniture as between the North and South.

Q. And in both directions?

A. And in both directions. I mean there, if it is competitive in both directions, Mr. Norman.

Q. What has been your experience now with reference to securing the concurrence of Official carriers in application of rates from the South to Official Territory on Official Territory basis?

A. I think in answering that question I should briefly outline some of the background of the furniture rate adjustment prior to the Commission's decision in Docket 17,000 Part 5, the furniture investigation, and efforts made since that decision to bring about a proper parity of the Southern [fol. 5342] rates with Official rates.

In that case it was established that the movement of furniture from southern manufacturing plants was on commodity rates, not only into other territories, but also in Southern Territory.

Those rates at the time the case was tried were as low, and in most cases lower than the rates prevailing within Official Territory.

In that case we sought to bring about an equalization of the rates. Such equalization would have, of course, required advances as well as reductions.

Generally speaking, it would have raised the level of the Southern rates, yet we advocated that because we felt it was proper to maintain a parity, even though to maintain the parity meant an increase in our rates.

The Commission, however, in that case found that the classification proper and the class rates were reasonable maximum rates on furniture, and made definite findings as to the classification which resulted.

Less than carload the Commission approved uniform ratings in all territories.

Thus, an article that the Commission found first class to be reasonable, that first class rate was established in all territories.

Consequently, of course, under the maximum basis, the [fol. 5343] less than carload rates as within and between the several territories would reflect the full classification difference that is the maximum basis.

However, as I have stated, the carriers are operating a lower basis than found reasonable by the Commission for the purpose of meeting truck competition. At least that was the reason given when these exceptions were established.

Following the decision in this case, the Southern carriers

found it necessary to revise their commodity rates to govern to the Fourth Section, and in making this revision, the Southern carriers undertook to equalize the northern-southern level of rates and put them on a strictly competitive basis.

The only method they could find of doing that would be to relate the Southern rates on furniture to the first class rates which would clear the Fourth Section. Consequently they undertook to establish this competitive basis by establishing percentages of first-class that would approximate the northern level of rates.

In the meantime the Official Classification carriers, following the decision in the furniture investigation, found it necessary to lower their basis of rates on furniture within our own territory to meet the competition.

It might be stated that furniture, generally speaking had always moved in Official Territory on the full classification basis, whereas the reverse was true in other territories. [fol. 5344] The commodity rates in Official Territory *was* the exception rather than the rule, whereas in the South commodity rates were the rule rather than the exception.

The Official Lines established in the fall of 1932 so-called truck competitive ratings on furniture in exceptions, the basis being on furniture less than carload class on all kinds of set-up furniture, except furniture rated lower than second class, and second class on all types of K.D. furniture unless the classification basis were lower.

On carloads they established a series of five ratings with a graduated scale of minimum weights. The basis that was established at that time is substantially in effect today.

The scal referred to I think are in the record, perhaps in several places, but they were specifically placed in the record by the witness Bowman at Indianapolis. I think you will find them on pages 3195 to 3199 of the record.

Following the establishment of the truck competitive rates in Official Territory, as I have previously stated, the Southern carriers undertook to equalize.

Mr. Clark: Mr. Commissioner, may I interrupt here? Here we are clearly dealing with truck competitive rates. They would hardly come under the head of class rates by any classification.

Furthermore, as I understand these furniture rates, they are column rates published as exceptions, and when I was [fol. 5345] examining Mr. Hart I understood you to say

I should not press him on certain commodity rate adjustments. That being so, I object and move to strike what has gone before.

Commr. Aitchison: I think it is important for us to know the reason which underlies these numerous exceptions because we have the question before us of making a classification.

The fact that the Southern carriers have voluntarily made exceptions to the classification and have maintained them is some evidence as to what a reasonable classification should be, and the witness is entitled, I think, to give his understanding of what the reasons were which led to the making of those exceptions.

Mr. Norman: What the witness is coming to—in the first place, to show these rates are controlled by the classification proper. The exceptions provide they shall be maximum rates.

Commr. Aitchison: But they are still maximum rates, regardless of whether they are exceptions or not.

Mr. Norman: That is right.

Commr. Aitchison: They cannot extend the classification rates.

Mr. Norman: That is right, and in that way they are involved. But what the witness is coming to, he is showing this background to show the effort the southern carriers made to get a parity of rates northbound, and the fact the [fol. 5346] northern carriers declined to give it, and he will be there in a moment.

Mr. Clark: By the same token, your Honor, all commodity rates involve the same elements of classification as do the column rates.

Commr. Aitchison: There has been no attempt that I know of to prevent anybody from giving us material evidence with respect to the kind of a classification we should make.

Mr. Clark: A while ago during the course of this hearing you made the point that no one had objected to certain testimony. I thought I might be waiving the views I had if I didn't rise and note an objection. If it is overruled I am out.

Commr. Aitchison: Answer the question.

By Mr. Norman:

Q. Proceed, Mr. Ryan.

A. Proposals were then made by the Southern carriers to establish rates on furniture from the South into Official Territory, a percentage of first class, which would result in rates that approximated the level within Official Territory for equal distances.

For example, they proposed on furniture of less than carload——

Commr. Aitchison: You don't need to go into examples. You have the thing that was proposed.

The Witness: I will waive that less than carload, but I [fol. 5347] do specifically want to refer to some carload ratings.

Commr. Aitchison: Is it typical?

The Witness: It is typical. It carries a point.

On furniture in carloads the principal movement is on a 12,000 pound minimum, and that is the minimum prescribed by the Commission.

The Commission prescribed in Official Territory second class 85 per cent of first class in Southern Territory, and between Southern and Official third class, which is 70 per cent of first class.

The Official lines reduced that 85 per cent rating by exception to 65 per cent, a reduction of 24½ per cent under maximum basis.

The Southern carriers proposed 48 per cent of first class to equalize with 65 per cent of first class and in an approximate way it would have resulted in the equalization.

The Official lines were unwilling to join in that. They finally offered 53½ per cent of first class, which represented the same percentage reduction under the maximum basis as they had made in their own territory. Consequently that basis would reflect the full difference in the class rate scale as between the reduced levels in the two territories.

That is an instance where the Official lines definitely refused to equalize, and I will come to that a moment later.

Commr. Aitchison: Did the Southern carriers accept that? [fol. 5348] The Witness: The Southern carriers reluctantly accepted. They were under compulsion of this Commission to readjust their rates, because the existing commodity rates were in violation of the Fourth Section, and

as I have stated those existing commodity rates, generally speaking, were lower than the Official level.

That adjustment was made effective December 5, 1932.

Immediately, although very little furniture had moved from the South by truck, the movement started by truck.

While these rates were published as truck competitive rates to meet truck competition, actually the rates were raised. They were in the ridiculous position of raising a rate in order to meet truck competition, and that actually took place, and the tariff was so published early in 1940, and prior — that day the Southern carriers had met up with us to find out why they had lost the furniture traffic.

We pointed out this rate adjustment had caused it. We made a traffic test and submitted it to them which showed 95 per cent of the furniture movement *was* from the Carolinas and southern Virginia to Baltimore and Washington was by truck, 75 per cent to Philadelphia, and 50 per cent to New York, and intermediate points.

The Southern Carriers then said, we will undertake to do something about it, and they filed proposals in January, 1940, Southern Freight Association Submittal Nos. 21324 [fol. 5349] and 21744, to establish specific commodity rates to meet this truck competition.

Incidentally, these commodity rates would not have been below the northern level.

Hearings were held before the Trunk Line Committee in New York, their hearing No. 1307 in March of 1940, at which there were various appearances.

We appeared in support of the proposal, and incidentally, representatives of Southern carriers appeared before the Trunk Line Committee and sought to have them approve this proposal in order to increase the rail movements.

There were objections made by northern manufacturers on the grounds that the truck competition adjustment rate in effect was satisfactory, and to change the rates from the South would necessitate a big revision within Official Territory, although there we were not proposing lower rates than in Official Territory.

The Trunk Line Association declined to concur in the adjustment.

The matter was reopened, another hearing was held in the fall of 1940, and the proposals were again disapproved by the Trunk Line Committee.

I point out, Mr. Norman, that that was after the Southern Governors decision.

Q. A year after.

[fol. 5350] A. A year after *was* the last hearing, pressure brought to bear was so great upon these Official lines that they did not concur in it, although it meant a movement of some seven or eight thousand cars a year that they would have gotten perhaps if these rates had been reduced.

That was not a request for general equalization into Official Territory, although it would have equalized it to the Atlantic Seaboard, and we believe would have met truck competition.

Q. And the level proposed there was no lower than the going level in Official Territory?

A. That is true, sir.

Because of that situation and because of the numerous efforts we have made from time to time to get the clearance of the Official lines in an equalized basis of rates, we are convinced that it can be done only if required by this Commission, or if first class rates are prescribed on the same level in the two territories or between the two territories.

Commr. Aitchison: Does that conclude your statement?

The Witness: Yes, sir.

Commr. Scott: You referred to the great pressure which was brought. By whom was it brought?

The Witness: The pressure was brought at these public hearings by manufacturers located in official territory. Early in one hearing—perhaps I ought not to testify to it, [fol. 5351] a threat was made—the threat, we will divert our traffic to the truck lines if you reduce the *reduce the* rates from the South.

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. McCollester:

Q. When did the furniture industry begin to develop in the South?

A. Around in the late 80's.

Q. And has its development been fairly steady since that time?

A. Yes, sir.

Q. It has grown quite considerably, has it not?

A. Yes, sir.

Q. It has changed, has it not, from an industry producing the lower grades of furniture so that now it produces the finest grades of furniture?

A. No, that is not true. The southern furniture industry produces a type of furniture that is purchased in the mass markets, that is the medium price and cheap furniture such as you will find in most of the department stores and installment stores in the City of Washington, and not the higher grades.

Q. I don't include the fine cabinet work.

A. But the good commercial grade, yes, sir.

Q. Would the furniture industry of the South be in favor of having rates put upon whatever may be the uniform [fols. 5352-5353] percentage of the Southern first class level if that was made uniform throughout Official Territory?

A. I am not sure that I get your question.

You mean if you transferred to Official Territory the present Southern level of furniture rates and make that the overall basis?

Q. Well, yes. I mean furniture rates are now percentage of first class.

A. Yes.

Q. And suppose the first class rates in Official Territory were put upon the Southern level and the same percentage continued, would that benefit the Southern furniture industry?

A. To apply the Official percentage to the Southern scale of rates?

Q. That is right, within Official Territory and from the South to Official Territory.

A. It would raise the rates from the South to apply the Official Classification ratings to the Southern Territory level of rates and would make them much higher than they are today.

Q. Do you advocate that?

A. Absolutely.

Cross-examination.

By Mr. Clark:

Q. Mr. Ryan, you have testified with respect to the competitive necessity due to the publication of northern interterritorial rates to market your products.

[fol. 5354] A. Yes, sir.

Q. I want to ask you why, if I understand your testimony correctly, is it necessary to have a reduction southbound into your territory in order to achieve that northbound result which you seem to favor.

A. Mr. Clark, that would not be necessary to bring about that equalization, but I point out this, that in the negotiations between the Southern carriers and Official carriers to bring about this adjustment, the Southern carriers themselves agreed to apply that level in both directions.

Q. Tell me, just what are you dealing with there when you say what the Southern carriers wished to do.

A. I am saying this. I don't know what they wish to do right now, but I think that at the time this adjustment was proposed, preceding the publication of 1932, I attended the public hearings at *the* Buffalo and elsewhere, and representatives of Southern carriers agreed to apply the equalized percentages in both directions.

Q. Mr. Ryan, that is not an answer to my question.

A. Pardon me?

Q. You are here today, as I understand it, espousing rates in both directions.

A. Yes.

Q. And you are speaking of the difficulty of getting northbound rates.

[fol. 5355] A. Yes, sir.

Q. And you testify as supporting your view that there should be southbound rates?

A. My testimony was in rebuttal of the testimony that I understand has gone into this record that the Official lines since the Southern Governors Case will permit this sort of thing.

Q. Will permit——

A. Will permit the Southern carriers in equalizing the rates.

Q. Then all your testimony about the difficulty of getting the northern lines to join has faded out of the picture.

A. No, I am stating that as far as we are concerned it is a fact that the Official lines will not join the Southern carriers.

Q. You are saying they won't?

A. Yes, sir.

Q. In order to get your northbound rate adjustments, you want to apply the same thing southbound.

A. Yes, sir.

Q. Do you appreciate that would bring the northern shippers into your territory?

A. Mr. Clark, I contemplate this thing in this case, general equalization of the first class rates east of the Mississippi River.

Q. I believe you told Mr. McCollester that the furniture [fol. 5356] industry has improved a great deal in the South.

A. Yes, sir.

Q. How much do you ship into Official Territory? What proportion of your production?

A. The last study we made of that kind of representative shippers, individual shippers, it varies; it depends upon what they make and what markets they are seeking, but we found a surprising thing, the movement is in proportion to the population.

Q. That still isn't an answer, Mr. Ryan, to my question.

A. I mean by this, that we ship into Official Territory the proportion of our production that is represented by their population to the total population approximately.

Q. Do you recall the exhibit that Dr. Aitchison put in, the green-backed exhibit in this case?

A. No, sir, I have not seen it.

Q. Suppose you look at page 15, furniture, and tell me if that doesn't show approximately 52 per cent is shipped to Official Territory of your total production. Is that right?

A. I don't know whether it is right or not. Show me what you are talking about.

Q. The circle there, Mr. Ryan.

Mr. Norman: He can refer to that on brief. Why should he ask the witness to take an exhibit and tell us what it shows?

[fol. 5357] The Witness: I know nothing about this.

Commr. Aitchison: You can direct his attention to it if you are going to follow it up with a question.

Mr. Clark: Yes, sir.

Commr. Aitchison: But not ask him what the exhibit shows.

By Mr. Clark:

Q. I am giving you the benefit of having seen evidence in this case.

Now I want to ask you, as a representative of the furniture industry, is that your view of the proportion?

Commr. Aitchison: Before he answers that, he is entitled to know what the document is. It is an analysis of the waybills of the carload traffic of the country for two days.

Mr. Clark: I handed it to him and Mr. Norman seemed to object to him looking at it. I tried to be fair with the witness, Mr. Commissioner.

Commr. Aitchison: You have got a question on the record that he hasn't answered.

Mr. Clark: He can if he wants to.

The Witness: What is the question?

By Mr. Clark:

Q. I asked you what proportion of your production you shipped to Official territory, and you went into a question of population.

To make it clearer, I handed you an exhibit of record to see if we could agree on that figure, and I was stopped.

I will ask you again what proportion of your total pro- [fol. 5358] duction of furniture, of the total you represent, is shipped into Official Territory.

A. Mr. Clark, the last test we made, which was several years ago, showed between 35 and 40 per cent of the southern production is sold in Official Territory.

Q. What percentage is marketed within Southern Territory?

A. I don't recall the exact figures; probably 16 to 20 per cent.

Q. I want to call your attention to the exhibit of Dr. Aitchison and ask you to examine it and see if you don't agree that 52 per cent is nearer correct.

A. No, sir, I do not agree. I agree the waybills show it, but I want to call your attention to this fact——

Mr. Norman: Page 15, Mr. Commissioner.

The Witness: No, I do not agree that represents what we shipped into Official Territory.

By Mr. Clark:

Q. You say it is 35 to 40 per cent?

A. Yes, sir.

Q. Is that at the present time or what period have you in mind?

A. I have that in mind for the last several representative years.

Q. I take it the present moment is perhaps a bit abnormal is the reason I wanted you to get to a more normal period.

A. Of course today war conditions have changed traffic. [fol. 5359] Q. I am asking you to take a normal period, say 1939.

A. I would say 35 to 40 per cent of the production is sold in Official Territory for the reason that there are more consumers in that terifory than in any other territory. There are more people that want furniture.

Q. You have to have customers or there would be no business.

A. True.

Mr. Clark: Thank you very much.

Mr. Bell: May I ask one question?

Cross examination.

By Mr. Bell:

Q. Would you briefly state what the reasons were for the establishment, growth and development of the furniture business in the South?

A. Mr. Commissioner, if you care for me to do so, I will undertake to answer it. I doubt if it could be answered briefly—the development of any industry.

Commr. Aitchison: I presume that was all covered by the report in the Commission's furniture case, was it not?

The Witness: Yes, sir. However, the business originated in the South for the reason it was a wooded area; lumber was available. They did the natural thing, they manufactured the wood into a finished product that could be sold at a profit. That was the beginning of it.

Commr. Aitchison: You can go back further and say there was a time when the South had the manorial system

[fol. 5360] of production of everything that was needed on the place, right on the place.

The Witness: Yes, sir, that was true prior to that time, but the growth of the industry is due in my opinion and my considered judgment to the enterprise of the men behind these establishments.

The most highly mechanized furniture plants in the United States are in the South, in North Carolina and Virginia.

In that area they found they had to be efficient to meet the competition of the old established sections and to produce products at a price that would move them.

We were breaking into a well-established and entrenched industry.

Consequently, in the development I think today the South, and I know the plants are more highly mechanized as a whole than the plants in other parts of the country. I am going to qualify that by saying there are tremendously efficient manufacturers in every part of the country in the furniture industry.

There are highly efficient manufacturers in Pennsylvania and other states, that actively compete and can produce goods as cheap or cheaper than they can be produced in the South.

The cost of production is not controlled by the area in which the plant is located. The cost of production is controlled by the efficiency of the management and the availability of materials.

[fol. 5361] Mr. Bell: Thank you.

Cross-examination.

By Mr. Hollopeter:

Q. Mr. Ryan, I believe you answered a question of Mr. Norman's awhile ago that you would be in favor of furniture rates being equalized in both directions provided there was competition in both directions. Am I correct in that?

A. Perhaps I didn't state clearly what I meant. I meant this, and we would not object to the rates being the same in both directions providing the southbound rate was not lower than the interterritorial rates we are paying in the South.

Q. Is it your position today there is competition in both

directions, that is from the North into the South, as well as from the South into the North?

A. Yes, there is competition in every direction on every commodity and in every industry.

Q. Then I understand it is your position whatever is done with the rates, they should be the same in both directions without any qualification with respect to competition.

A. I am qualifying it by stating that to establish one common level of rates would correct the situation we are complaining of now. If that is not done, then we would say the principle of the Southern Governors Case should apply.

Q. I believe a little later I understood you to say you were shipping into Official Territory a proportion of your [fol. 5362] production that was equivalent to the proportion of the population in that territory. Is that correct?

A. On second thought, that is not correct.

Q. What is correct?

A. 35 to 40 per cent.

Q. Of your production?

A. Of the production in the Southeast.

Q. Then do I understand you are disposing of about, oh, 16 per cent, would you say, in the South?

A. 16 to 20 per cent in the South, yes, sir.

Q. Comparing the population in the area of the South with the population of the area in the north, would you say that per cent going into the north is a lesser proportion compared to the population than that which you are putting into the South?

A. I won't make a calculation for you, but I will give you the population of those areas if you want it for the record.

Commr. Aitchison: That doesn't mean much unless you give the movements.

Mr. Norman: He has given the movements.

The Witness: He wants me to compare them with the population and give him the per cent.

Commr. Aitchison: You did that originally and then you said you made an error and now he wants to know——

The Witness: I am qualifying; I said from 35 to 40 per [fol. 5363] cent is shipped into Official Territory; 16 to 20 per cent is consumed in Southern Territory.

By Mr. Hollopeter:

Q. Then may we clear it up by asking where the balance of your production goes?

A. It goes to the territory west of the Mississippi River.

Commr. Aitchison: Are you speaking of all of the Southern Territory now?

The Witness: Yes, sir.

By Mr. Hollopeter:

Q. That would leave, would it not——

A. (Interposing): 35 to 40 per cent.

Q. (Continuing): About 40 per cent going into the territory west of the Mississippi River.

A. Yes.

Q. That is doing that under the present rates. Do you contend you should still be able to move more of your production into Official Territory than that amount?

A. I can't answer the question, but I do want to point out this. Bear in mind, sir, as I previously stated, much of this traffic is not moving into Official Territory by rail.

Q. How does it move?

A. It moves by truck.

Q. Does any of it move by water, coastwise, or did it before the present situation?

A. No, very little.

Q. Do you feel that your truck rates, on the basis that [fol. 5364] you have just stated, that is what moves much of your production into Official Territory, should be a basis upon which the rail rates in Official Territory should be fixed?

A. No, sir.

Mr. Hollopeter: That is all.

Commr. Aitchison: When you speak about 35 or 40 per cent going to Official Territory, what is your 100 per cent?

The Witness: 100 per cent, Mr. Commissioner, would be the approximate total production of the Southern factories. Do you want that in dollars?

Commr. Aitchison: No. Regardless of how it moves?

The Witness: Yes, sir.

Commr. Aitchison: The exhibit which was shown to you represented something like 52 per cent but that was related to the movement by rail as 100 per cent.

Mr. Norman: Yes, that is right.

The Witness: There is a possibility that that is the rail proportion. In the furniture industry, in gathering statistics, we have no uniform units. Furniture runs from a small end table on up to a large break front cabinet. Consequently all our statistics within the industry are on a dollar basis rather than on a tonnage basis.

Commr. Aitchison: If you are comparing the 35 to 40 per cent which moves to the north, Official Territory, with your total production, you have to take into account that a [fol. 5365] part of your total production moves from the South either by truck or by private conveyance and part is sold locally at the point of manufacture.

The Witness: That is true. Generally speaking, however, the bulk of the production is in towns of 2,500 or under, and the local sales will be only a small proportion of the production.

Commr. Aitchison: How about your truck movement, or movement by a contractor or by a private vehicle?

The Witness: Well, it is moved by private trucks owned by the shipper. It is moved on private trucks owned by the dealer who comes to the factory and gets the furniture.

Commr. Aitchison: How about common carrier?

The Witness: It moves by common carrier.

Commr. Aitchison: Is the aggregate of those methods of conveyance considerable?

The Witness: Yes.

Chmn. Alldredge: Do you export any furniture?

The Witness: Export furniture? No. The exports from the United States on household furniture are practically nil, probably one-fourth of one per cent.

Chmn. Alldredge: All your consumption is domestic.

The Witness: Domestic, except of course the United States and Canada, but for the past two years there has been an embargo on furniture into Canada.

[fol. 5366] Commr. Aitchison: Any further questions?

Commr. Scott: Mr. Ryan, if those proportions as to your territorial distribution, were you speaking for the entire southern industry, or for the group of them that you represent?

The Witness: Well, I would say this, Mr. Commissioner, that we have a total of about 230 or 240 members.

They produced last year 95 per cent of the furniture produced in the South, so I would say that we represent the vast majority of the production in the South.

Commr. Scott: And the figures you gave are probably true for the whole 100 per cent?

The Witness: Yes, sir.

Commr. Scott: Thank you.

The Witness: Will you bear in mind that I gave those as an approximation based upon my knowledge and there might be some variation.

Cross-examination.

By Mr. Clark:

Q. Mr. Ryan, let's see if I clearly understand you, in view of the questions from the bench and from Mr. Hollopeter.

Is it true that of your total production that is shipped by rail to the several territories, that approximately 50 per cent moves to official territory, and around 20 per cent within Southern Territory, the remainder west of the Mississippi River?

[fol. 5367] A. No, I said between 35 and 40 per cent into Official Territory.

Commr. Aitchison: I beg your pardon, Mr. Ryan. He asked you whether you were speaking of movement by rail or your total production, and you said total production.

The Witness: You are talking about rail?

By Mr. Clark:

Q. I asked you the specific question.

Please read the question and let's get it exactly right.

(Pending question read.)

A. Mr. Clark, let me correct what I have said by stating this, that I could not tell you what proportion of the total rail movement moves into Official Territory.

My statement is that of the total production we estimate that between 35 and 40 per cent of it is sold in Official Territory irrespective of the transportation agency used.

Q. Perhaps we can get it this way. Can you tell me approximately what percentage moves by truck and what by rail?

A. No, I can't for this reason. The long haul business west of the river from the Southeast, none of it moves by truck.

To the Atlantic Seaboard, to the City of Washington, 95 per cent of the furniture produced in North and South Carolina and southern Virginia moves by truck into this city.

Something like 95 per cent to the City of Baltimore; 75 per cent to Philadelphia and 50 per cent to New York.

[fol. 5368] In other directions the percentage differs. Of the total I don't know how much moves by truck. We have made no test.

Q. In view of your truck movements I am surprised that you are so interested in your rail rates northbound.

A. We are, sir. We are confronted by a rubber situation and we are further confronted by the fact that the truck lines will eventually follow the rail adjustment.

Commr. Aitchison: You are excused.

(Witness excused.)

Mr. Norman: That completes my presentation.

Commr. Aitchison: Mr. Bee.

Mr. Bee: We have one witness.

J. C. Murray was duly sworn and testified as follows:

Direct examination.

By Mr. Bee:

Q. Your name is J. C. Murray?

A. Yes, sir.

Q. You testified in this case at Columbus, Ohio?

A. Yes, sir.

Q. And in that case you presented certain exhibits, Mr. Murray?

A. Yes, sir.

Q. Thereafter the witness Tannehill presented an exhibit calling attention to what he considered were certain errors in that exhibit presented by you?

[fol. 5369] A. That is right.

Q. Have you prepared an exhibit correcting your original exhibit in line with the errors called attention to by Mr.

Tannehill and stating those errors that he calls attention to which you will not accept?

A. Oh, what I did was to check his exhibit and recheck mine.

Mr. Bee: May we have that marked as an exhibit?

Commr. Aitchison: That will be Exhibit 221.

(Exhibit 221, Witness Murray, marked for identification.)

By Mr. Bee:

Q. Will you please explain briefly what Exhibit 221 is?

A. Exhibit 221 merely takes Mr. Tannehill's exhibit and my Exhibit No. 96 and admits on the face of the exhibit wherever Mr. Tannehill was correct in his exceptions to my exhibit, and also shows with authority the instances in which Mr. Tannehill's criticisms are incorrect.

Mr. Bee: We offer Exhibit 221.

Commr. Aitchison: Without objection it is received.

(Exhibit 221, Witness Murray, received in evidence.)

Mr. Bee: That is all.

Commr. Aitchison: Cross examine. (No response.)

Mr. Bee: That concludes the surrebuttal.

(Witness excused.)

[fol. 5370] H. N. Roberts was sworn and testified as follows:

Direct examination.

By Mr. Barron:

Q. Will you state your name, your position and briefly your experience?

A. My name is H. N. Roberts; 720 Cotton Exchange Building, Dallas.

I am chairman of the Texas-Louisiana Freight Bureau. I have had more than 25 years experience as a traffic officer of the southwestern railroads.

I am a practitioner before this Commission.

Q. Have you prepared or had prepared under your supervision an exhibit which you wish to introduce in this proceeding?

A. I have one exhibit with some supplementary pages. It has been distributed.

Mr. Barron: That will be what number, Mr. Chairman?

Commr. Aitchison: That will be exhibit 222.

(Exhibit 222, Witness Roberts, marked for identification.)

Mr. Barron: The supplemental matter that is also attached with Mr. Roberts' exhibits are pages that are to be placed in the back of Exhibit 222 instead of making two exhibits.

Commr. Aitchison: Let us understand about this now. Off the record.

[fol. 5371] (Discussion off the record.)

Commr. Aitchison: This supplementary matter will be marked Exhibit 223.

(Exhibit 223, Witness Roberts, marked for identification.)

Mr. Bee: On behalf of the southwestern interests, especially Texas, I desire to offer an objection to this testimony and this exhibit because it relates entirely to intrastate rates within the State of Texas, and has no bearing on the issues here.

Mr. Barron: This is rebuttal testimony, if the Chairman please, of Dr. Frederick that was put in either at Indianapolis or Columbus, I do not recall which, wherein he made the unqualified statement that because of the rate situation, the industries in Texas had been retarded and and they couldn't industrialize Texas.

We want to show you the complete picture by showing what the railroads have published in the line of rates to accord the manufacturers in the State of Texas.

Commr. Aitchison: I am interested to know why an exhibit of this magnitude has to be put on on short notice. Has Texas been given an opportunity to examine this?

Mr. Bee: We have no objection to the exhibit as far as the time is considered. We have had an opportunity to examine it. We believe as far as the exhibit itself is con-
[fol. 5372] cerned that it portrays facts. There are certain conclusions reached by the witness that I desire to ask a few questions about, but the exhibit itself, there is no ob-

jection to it, if the Commission feels that it is a matter pertinent to this investigation.

Commr. Aitchison: Obviously the rates which may be going within a state have got some bearing and some influence with us when we come to write a classification.

Is there objection to the statement being copied in, gentlemen?

Mr. Bee: No, none whatever.

Commr. Scott: I wonder if Exhibit 222 might show on its face what it is.

Mr. Barron: No, it does not, Mr. Commissioner. Please answer the Commissioner, Mr. Roberts.

The Witness: It is a comparison of the rates in Texas intrastate with the rates in Central Freight Association Territory on the same commodities for corresponding distances.

I have had prepared under my direction and supervision an exhibit consisting of 126 pages, which has been consolidated in book form. This has been identified as Exhibit No. 222. The purpose of its preparation is to present to this Commission a number of rate comparisons covering a large volume of commodities which originate and move between points in Texas. This exhibit shows the Texas rates for representative distances compared [fol. 5373] with the rates in Central Freight Association Territory for similar distances.

We have had in Texas during the past four years several rate hearings before the Railroad Commission of Texas wherein the level of rates in Central Freight Association Territory and in Texas were brought into issue.

In my section of the country there is one school of thought which has proclaimed far and wide that Texas rates and rates in the Southwest are 175 per cent of the Central Freight Association level. The sponsors of this unproven theory appear to base their claim on the so-called Tennessee Valley Authority Report.

There are others who contend that Texas rates are 160 per cent of the Central Freight Association level. The Freight Rate Equality Federation, sponsored by the West Texas Chamber of Commerce, appears to lean to the 160 per cent theory.

In all instances when testimony has been given by either group their conclusions have been formed by taking the

first class rates in the Central Freight Association Territory and in Texas and the Southwest and drawing a mathematical average for comparison one territory versus the other.

Very important factors which make it almost impossible to reach a conclusion regarding the relationship between the body of rates in one territory and that by another *has* been overlooked.

One of the most important factors toward trying to es- [fol. 5374] tablish a relationship of this kind, and one which is openly disregarded, is the competition of traffic in the respective territories. The composition of traffic in Texas is dissimilar indeed to the composition of traffic in Central Freight Association Territory.

Another important factor is the fact that average hauls very greatly between the Central Freight Association, on the one hand, and Texas on the other. There is a broad dissimilarity also between the commodities which make up the preponderance of tonnage within the same territory.

There is a third factor also, which is that in each territory exceptions are provided to the Classification. These exceptions differ in each territory and are designed to adapt the class rate bases to the traffic moving therein.

To demonstrate the dissimilarity between the traffic being handled in Central Freight Association Territory and that moving in Texas, and to demonstrate the fallacy of the conclusion that Texas rates are generally higher than Central Freight Association rates, my Exhibit No. 222 was prepared. I shall undertake to discuss the series of statements included in the exhibit in the order in which they are bound.

It is not contended that any one or all of these comparisons should form a proper basis for arriving at an exact relationship, but I do contend that they demonstrate that any general statement which has been made to the effect [fol. 5375] that the rates in Texas are higher than Central Freight Association rates is not correct.

This exhibit has been divided into a series of statements, separated by a blue sheet between each series. These series are further identified by a letter prefix, beginning with "A" and running through "J".

Pages A-1 and A-2 show comparisons between Texas intrastate and Central Freight Association first class rates

up to 900 miles. The Central Freight Association class rates do not extend beyond that distance. The Texas class rates, however, extend to 1500 miles. It seems to me that it would be sufficient here to discontinue the comparisons at 900 miles, which as I have just stated is the maximum Central Freight Association distance.

In preparing Pages A-1 and A-2, I have used I. C. C. Docket 13535 mileage blocks and the last column shows the percent which the current Texas first class rate is of the current Central Freight Association first class rate for an equal distance.

At the end of the statement, on page 2, it is shown that the average percent which the Texas first class rate is of the average first class rate in Central Freight Association territory is 151 per cent. It is the first class rates which are used to determine the going factor when rates are based on a certain percentage of first class either by the Classifi- [fol. 5676] cation, Exceptions to Classification, or by specific provision in a commodity tariff. There are many such rates related to first class in both Texas and Central Freight Association Territory which will be compared on other pages of this exhibit.

The volume of tonnage moving under first class rates in Texas is relatively small. For example, according to the 49th Annual Report of the Railroad Commission of Texas which is covered — the calendar year of 1939, the Class I Railroads of Texas originated a grand total of carload traffic amounting to 23,714,555 tons.

The total weight of less than carload traffic originated by the same group of carriers for the same period amounted to 393,679 tons. This latter figure represents approximately 1.5 per cent of the total, and it represents all of the less than carload tonnage originated by the Class I railroads in Texas.

In 1940 the l.c.l. tonnage was 1.5 per cent of the total. Not all of this less than carload traffic moved under first class rates by any means. The preponderance of less than carload movements in Texas takes place under the various mixtures which we have in that state; such as the grocery, hardware, and drug mixtures comprising about 1000 articles. There is scarcely an article used in the modern home which is not shipped under one of these mixtures, the average rating being less than third class. I do not have figures

[fol. 5377] to show the amount of tonnage which actually moves subject to first class rates or higher, but it is safe to say that not as much as ¼ of 1 per cent of our total tonnage moves under first class rates or higher.

Pages B-1 to B-14, inclusive, show the Classification and commodity bases in Texas and Central Freight Association Territory. For example, on acids the classification rating in Texas is Column 100 or first class, while the going commodity basis is 77½ per cent of first class. In the Central Freight Association both the classification and the going commodity basis are Column 100 or first class.

If this Exhibit is carefully examined, it will, I believe, demonstrate to anyone the futility of forming a conclusion regarding rate levels by comparing class rates between two territories when the differences in the classification and the class rates, themselves, are as great as they are shown to be between Texas and the Central Freight Association.

There are 296 exceptions to the Classification in Texas; of these 273 provide lower rates in Texas than would be provided by the use of the Classification itself, while on the same 296 articles, only 124 have exceptions providing for lower rates in Central Freight Association Territory.

Five of the exception ratings in Texas provide higher than the Classification; in Central Freight Association [fol. 5378] Territory there are eight such exception ratings. To get the full import of this comparison I have totaled the percentage of first class in each of the rating columns and find that the exception ratings in Texas are in the aggregate of 70.6 per cent of the classification ratings, while in Central Freight Association Territory the corresponding percentage is 89.2 per cent. To be a little more specific, attention is invited to the tabulation on page B-14.

By reason of the exceptions Texas shrinks its average ratings 21 percentage points, which is the difference between 64.6 and 43.6, while on the same articles the Central Freight Association by exceptions shrinks its average ratings only 6.6 percentage points, the difference between 60.8 and 54.2. The average of exception ratings shown on this statement in Texas is 43.6 per cent, and in Central Freight Association 54.2 per cent. Thus we find the ratings included in this exhibit for the Central Freight Association are on an average of 124 per cent of those in Texas.

Putting it another way, Texas average ratings is 82 per cent of the Central Freight Association.

Pages C-1 to C-41, inclusive, show numerous comparisons between Texas rates which are the same as, or lower than the rates on the same commodities in Central Freight Association Territory for representative distances.

Page 2 of the statement is an index of the commodities [fol. 5379] treated, showing the page number on which the comparisons may be found. The selection of commodities was not made at random, but because they originate and move in substantial volume in Texas. Other commodities could have been added, but these are representative and we believe sufficient to support our contention.

Pages D-1 and D-2 show comparisons on vegetables, mixed carloads, in Texas, with the rates in Central Freight Association Territory. This statement should be considered in connection with pages C-1 to C-41, inclusive, but because of the various rates applicable in Central Freight Association Territory we have found it necessary to be more elaborate in our presentation.

Attention is called to the examples of relationships found at the bottom of page D-2. This shows that we have rates in Texas which are as low as 58 per cent of the rates on the same commodity in Central Freight Association Territory.

Pages E-1 to E-5, inclusive, show a comparison between the rates on canned goods in Texas, and Central Freight Association Territory. Pages E-1 and E-2 reflect comparisons for distances up to 800 miles. The Texas railroads have found ... necessary to meet the requirements of the canning in...try by establishing a large number of special rates lower than the scale rates.

A tabulation of these special rates, their origins and [fol. 5380] destinations will be found on pages E-3, E-4 and E-5. For example, according to the tabulations on pages E-3, E-4 and E-5 there is a total of three special rates for distances between 95 and 100 miles.

There is a 5 cent spread between the 20,000 and 60,000 mileage rates. The average rate, therefore, for the mileage block 100 and over 95 page E-1 is 10 cents subject to a minimum of 60,000, and 15 cents under the 20,000 minimum. In 1939 the Texas railroads originated 130,144 tons of canned goods; the lines in the Central Eastern Region originated 990,188 tons. The percentage of the canned

goods tonnage to the total tonnage handled by the Texas lines was .49 per cent; for the Central Eastern Region, .47 per cent.

The ton per mile of line in Texas was 8; for the Central Eastern Region, 41. Putting it another way, there originated in Texas canned goods tonnage amounting to 13 per cent of that which originated in the Central Eastern Region. Notwithstanding this showing, our Texas rates are considerably lower as we have shown by pages E-1 to E-5, inclusive.

Pages F-1 to F-5, inclusive, show a comparison between the Texas rates and the various rate scales which we have found in effect in Central Freight Association Territory applicable on road building materials such as sand, gravel, crushed stone and articles taking same rates. In all instances, the Texas rates are lower than the Central Freight [fol. 5381] Association rates.

Striking a general average of these scales, the Texas average rate of the Central Freight Association average rate, both single and joint, is 75 per cent. The average per cent which the Texas rates bear to the C. & E. I. scale is 48 per cent; to the Illinois Central scale, 62.5 per cent. With the exception of the Illinois rates shown on page 5, the statement was prepared for distances 300 miles and less. Generally this is the maximum distance of the scales in Central Freight Association Territory; also, the major portion of this traffic in Texas moves for distances less than 300 miles with an average weighted haul of less than 100 miles.

Pages G-1 to G-34, inclusive, show numerous rates applicable between points in Texas which are on a higher level than the rates on the same commodities in Central Freight Association Territory.

All commodities taking rates slightly higher in Texas could not be included in an exhibit of this kind, because of the enormous amount of work involved. Selections were made, however, to cover commodities which originate and move between Texas points in substantial quantities.

Beginning with page G-3 and ending with page G-34 we have shown that the average rates in Texas on these commodities for the distances shown range from 95.9 per cent to 120.8 per cent of the Central Freight Association rates. [fol. 5382] Pages H-1 to H-6, inclusive, is an analysis of traffic originated on all railroads of Texas and on Class I

Railroads in the Central Eastern Region. Pages H-1 and H-2 is a statement arranged by commodity groups as they appear in the 49th Annual Report of the Railroad Commission of Texas covering the calendar year of 1939. This arrangement of commodity grouping is similar to I.C.C. Statement 40100. The Central Eastern Region is used because it generally includes Central Freight Association Territory. It has not been possible for me to divorce data for the Central Freight Association from the Central Eastern Region Report.

Page H-3 shows commodities originating and moving in Texas each of which produces more than 1 per cent of the total Texas tonnage; the per cent which such commodities are of the total tonnage in the Central Eastern Region; also, tons per mile of road in Texas and the Central Eastern Region.

For example, wheat represents 5.53 per cent of the total tonnage originated by the Texas railroads; it represents .76 per cent of the total tonnage originated in the Central Eastern Region; 90 tons per mile originated in Texas, while 68 tons per mile originated in the Central Eastern Region.

Page H-4 shows a list of commodities each of which produces more than 1 per cent of the total tonnage originated in the Central Eastern Region, and the per cent which such commodities are of the total tonnage originated in [fol. 5383] Texas and the tons per mile of road. This page also shows that the commodities producing more than 1 per cent of the total tonnage in the Central Eastern Region amount to 90.04 per cent, while the same commodities in Texas amounted to 63.97 per cent of the total.

Page H-5 and H-6 show the relative importance of a partial list of commodities on which rates in Texas are lower than or higher than rates in Central Freight Association Territory. There is also shown on page H-5 the average per cent which the Texas rate is of the average Central Freight Association rate and the per cent of the total tonnage which that commodity bears to the total tonnage originating in Texas and the Central Eastern Region.

For example, on wheat, flour and mill products the Texas rate is 94 per cent of the Central Freight Association rate. These commodities represent 8.79 per cent of

the tofal Texas tonnage; in the Central Eastern Region 1.87 per cent of the total.

At the bottom of the page it is shown that the average Texas rates are 80.4 per cent of the Central Freight Association average rates, on 48.99 per cent of the total Texas tonnage originated.

On page H-6 are listed, first, the commodities which are subject to higher rates in Texas than in Central Freight Association Territory. For example, near the center of the [fol. 5384] tabulation refined petroleum oils are subject to rates in Texas which are on an average 107.3 per cent of the rates in Central Freight Association Territory. These commodities represent 21.22 per cent of the total Texas tonnage, while they represent in the Central Eastern Region 5.06 per cent of the total.

This tabulation shows also that the average per cent Texas rates is 109.7 per cent of the C.F.A. average on 34.53 per cent of the commodities making up the total tonnage originating in Texas. This same group of commodities represent 65.63 per cent of the total tonnage originated in the Central Eastern Region.

Striking an average, as shown on the lower half of page H-6, we contend that on 83.52 per cent of the total tonnage originating on the Texas lines as reported by the Railroad Commission of Texas for the calendar year of 1939 the average per cent which the Texas rates are of Central Freight Association rates is 95 per cent.

If it were possible to rate the remaining 16.48 per cent of the total Texas tonnage for the year 1939, I am confident that there would be no increase in the average Texas percentage of the Central Freight Association rates; that is, I believe the average percentage for the Texas lines would still remain under the 100 per cent mark. I am confident this would be the situation, because there are many com- [fol. 5385] modities taking lower rates in Texas which cannot be included in the tabulation we have made—pages H-1 to H-6, inclusive.

My views are further supported by pages C-1 to C-41, inclusive, which contain many rates lower in Texas than they are in Central Freight Association Territory, which cannot be applied to the statistical tonnage report issued by the Railroad Commission of Texas because of its many consolidations.

When I prepared my exhibit in expectancy of testing at the Indianapolis hearing, the report of the Railroad Commission of Texas for the calendar year of 1940 was not available. I have since obtained a copy which is styled the 50th Annual Report of the Railroad Commission of Texas for the year ended December 31, 1940.

Using the statistical data in this report and Statement No. 41100 of the Interstate Commerce Commission for the year 1940, I have prepared Pages I-1 and I-2.

Page I-1 shows that on 48.64 per cent of the total Texas tonnage originated, the Texas rates were 80.4 per cent of the Central Freight Association rates.

The upper portion of page I-2 shows that on 33.67 per cent of the total Texas tonnage the average Texas rates are 109.7 per cent of the Central Freight Association. The lower portion of page I-2 shows that the Texas rates are 95 per cent of the Central Freight Association rates on 82.31 per cent of the total Texas tonnage originated. It is [fol. 5386] interesting to compare pages H-5 and H-6, which cover the calendar year 1939, with pages I-1 and I-2, which cover the calendar year of 1940. These statements show that there was little variation in the tonnage originated in Texas and the Central Eastern Region for the two years in so far as the commodities which I have treated are concerned.

Pages J-1 to J-15, inclusive, show comparisons of rates on articles comprising the Grocery, Hardware and Drug Mixtures in Texas and the rates on the same articles in C. F. A. territory.

Column 1 reflects the rates applicable on the grocery mixture as explained on pages J-3 to J-5 inclusive; column 2 reflects the rates on the hardware mixture which is explained on pages J-6 to J-8, inclusive; column 3 reflects the rates under the Drug Mixture which is explained on pages J-10 to J-15, inclusive. There are no grocery and hardware mixtures in C. F. A. Territory, but there is a drug mixture which is applicable on a wide variety of articles, and the rates are shown under the last column, pages J-1 and J-2.

The purpose of this exhibit is to give force to our contention and previous testimony to the effect that there is very little tonnage moving in our section of the country under class rates.

The exhibit shows that for 130 miles and less our Texas grocery and hardware mixtures rates are lower than C. F. A. [fol. 5387] third class; for 260 miles and over 130 miles the grocery and hardware mixtures are lower than C. F. A. second class; for 350 and over 260 miles they are lower than C. F. A. first class.

The grocery mixture rates are subject to a minimum rate of 500 pounds, while the Hardware Mixture carries a minimum of 300 pounds. The articles included in these mixtures are rated in the Classification third class and higher, many of them subject to first class and higher. Our drug mixture rates are somewhat higher than the rates in the C.F.A. Territory, but they are considerably below the Texas class rates. The Texas mixture rates shown on this exhibit are in keeping with similar rates in effect in the southwest.

Chmn. Alldredge: May I ask one question?

Mr. Barron: Yes, indeed.

Chmn. Alldredge: Did you cover the whole part of these rates or just select certain commodities?

The Witness: We covered the principal moving commodities in Texas.

Chmn. Alldredge: I notice goats in here. Is that a big moving commodity in Texas?

The Witness. It is indeed, sir.

Chmn. Alldredge: So you used your own judgment as to what you selected; is that right?

The Witness: We were guided by the volume of the movement. That was the outstanding reason for it.

[fol. 5388] In other words, we selected commodities which moved in considerable volume under the intrastate rates.

Chmn. Alldredge: I just wanted to get the basis. It does not attempt to compare all the rates.

The Witness: No, sir.

Commr. Aitchison: I suggest you read Rule 84-A before you put another exhibit of this size up to us.

Mr. Barron: I will agree with you that it does not conform to the rule.

By Mr. Barron:

Q. Mr. Roberts, the rates that you have shown intrastate within Texas, do they reflect the 148 increases?

A. They do not, for the reason that this exhibit was prepared for presentation if possible at the Indianapolis

hearing. The Ex Parte 148 rates were not in effect in Texas at that time and did not take effect until March 1, 1943.

Q. The rates shown as applicable within C.F.A. territory, do they reflect the 148 increases?

A. They do with the exception of Exhibit 223. That exhibit was prepared by me personally last week, and the rates shown therein are exclusive of Ex Parte 148 increases in both territories.

Mr. Barron: I offer Exhibits 222 and 223 in evidence.

Commr. Aitchison: Without objection they will be received.

(Exhibits 222 and 223, Witness Roberts, received in evidence.)

[fol. 5389] Mr. Barron: You may cross-examine.

Commr. McConnaughey: Can you tell me, in the State of Texas and your part of the country, what percentage of total tonnage moves under class rates?

The Witness: No, sir, I cannot. I can tell you what percentage moves under less than carload rates, and it is less than 1.5 per cent of the total tonnage.

Cross-examination.

By Mr. Bee:

Q. Mr. Roberts, in line with that answer, is not one of the reasons why there is not a greater percentage of the traffic in Texas moving under less than carload rates because the carriers have seen fit to make commodity rates on less than carload traffic to meet truck competition?

A. That is true, truck competition and commercial competition, I should say.

Q. Turning to the first section of your Exhibit 222, there — have compared the Column 100 rate in C.F.A. Territory and in Texas showing at each mileage block of the comparison the percentage relationship that the Texas rate is of the C.F.A. rates.

Just for a quick comparison, at 100 miles you show that the relationship of Texas to C.F.A. is 131.9.

The reverse relationship, if you will accept my figures, Mr. Roberts, would be 75.85, that is, that the C.F.A. is 75.85 per cent of the Texas rate.

[fol. 5390] A. If you have figured it out, I will accept your calculation.

Q. At 200 miles it would be approximately 70 per cent, and at 300 miles, approximately 70 per cent.

Taking in the second section, or B, is it not a fact that in nearly every instance the classification rate in Texas is higher than the classification rating in C.F.A.?

A. It is true in some instances. The exhibit speaks for itself, Mr. Bee.

Q. Well, on the first page of that exhibit it appears from the count I have made that of 25 items listed, 11 of them have the same rating in Texas and in C.F.A. classification basis, while 14 of them have a higher rating in Texas than they do in C.F.A.

A. I haven't counted them. I don't know whether that is correct or not, Mr. Bee.

Commr. Aitchison: What deduction do you want us to draw from this mass of figures?

The Witness: I am trying to show that our rate level in Texas, Mr. Chairman, is not as high as the rate level in the Central Freight Association Territory.

Mr. Bee: Mr. Chairman, the result is shown on page 2 of the statement, the tenth line from the bottom in the middle of the page, "But I do contend that they demonstrate that any general statement which has been made to the effect that the rates in Texas are higher than Central Freight [fol. 5391] Association rates is not correct."

I think that is the trend of the exhibit and the trend of the testimony, and it is upon that basis I am attempting to cross-examine the witness.

Chmn. Alldredge: Is it the function of a witness to contend?

Mr. Bee: Well, they have been doing it throughout this hearing, so I was not going to object to Mr. Robert's statement.

By Mr. Bee:

Q. Has not the fact that the classification basis in Texas is higher than the classification basis in C.F.A. been the principal reason why the rates have been reduced in Texas?

A. I do not understand that is correct.

Q. Then what do you think has caused the material reduction in Texas as shown on pages 1 to 13 of your Section B exhibit?

The Witness: State the question again.

Q. Will you please state why the material reductions have been made in the ratings as shown on pages 1 to 13 of the B section of your Exhibit 222?

A. I couldn't undertake to explain that here.

Q. Under Section C to H, inclusive, you compare the rates by commodities, do you not?

A. You are speaking of C series?

Q. C to G, inclusive, I think it is.

A. That is correct, C to G, inclusive.

[fol. 5392] Q. And you have given throughout your comparisons the same weight to a shipment moving five miles as a shipment moving 900 miles, have you not?

A. We have endeavored to make an average of the rates for the distances up to 900 miles.

Q. And when you came to the so-called building material rates, in order to get that comparison, you moved a shipment 300 miles as a maximum in the State of Texas, but you used the rates in Illinois for distances of 400 and 500 miles, and compared the total of 400 and 500 miles to the 300 mile total in Texas, did you not?

A. I don't think so. That is a rather long question.

Q. Will you please refer to page F-5 and see if you did not do that.

A. The exhibit with respect to the road building materials, pages F-1 to F-5, inclusive, was made for the same purpose that comparisons were made on other commodities, and it was prepared separately for the reason that there are many scales in C.F.A. territory, whereas we have only one scale in Texas.

Q. Will you look on page F-3, if you please, Mr. Roberts, and state whether or not the maximum distance used in Texas was 300 miles.

A. That is correct.

Q. Now, then, look on page F-5 and see whether or not in [fol. 5393] Illinois you used 400 miles under the C. and E. I. scale, and 500 miles under the Illinois Central scale, and compared the total of 400 miles and 500 miles respectively with 300 miles in Texas.

A. The analysis is on page 4, Mr. Bee, and it is a general average of the rates for the distances covered by the exhibit.

Q. Where is there any analysis on page 4 of the C. and E. I. scale and the I.C. scale?

A. It is not, but that is touched upon in my prepared statement.

Commr. Aitchison: What is the I.C. scale?

Mr. Bee: Illinois Central.

By Mr. Bee:

Q. Isn't it actually shown on page 5 and don't you show that the total of the C. and E. I. scale is 12,444? And that that divided by the number of rates used would produce an average rate of 204, and then did you not take the average rate of 98.7 for Texas, shown on page 4, and then show the Commission that the Texas rate is 48 per cent of that?

A. Yes, I believe that is correct.

Q. And you compared 300 miles aggregated in Texas with 400 and 500 miles aggregated in Illinois.

A. The actual haul in Texas is considerably less than 300 miles. That is probably the reason that was done.

Q. You mean you would aggregate the rates for 500 miles [fol. 5394] by blocks and take the total of that and aggregate them for 300 miles in Texas by blocks, and then compare those two rates to see what percentage the Texas rate is?

A. A proper comparison, as you have just explained it, would be to take distance for distance.

Q. Yes, sir. Did you in getting the percentages which are shown at the bottom of each page use an average of averages to secure those percentages, or how did you secure them?

A. What do you mean by at the bottom of each page?

Q. Taking the bottom of page C-40, if you please, in which you show that the total of the Texas commodity scale on crude oil is $3.025; that the total of the C.F.A. rates on crude oil is $3, and you show that the Texas rates are 99.7 per cent.

A. Yes.

Q. Can you tell me how you get that 99.7 per cent without taking the average of averages of the rates shown on the right hand column?

A. That is what we did. We took the average of the averages.

Q. Is that the proper way to secure the relationship of those rates, or would you take the $3.025 as a total into the $3 as a total to see what the rates would be?

A. We have done that in each instance.

Q. Let's see if you have. 302.5 is more than 300, isn't it?

A. What do you mean by two and a half?

Q. Don't you show the rate is $3.025 in Texas, the total of [fol. 5395] the rates?

A. Yes.

Q. And you show the total rates in C.F.A. as $3?

A. Yes.

Q. Isn't $3.025 more than $3?

A. It is.

Q. Could it be 99.7 per cent?

A. No, that figure is wrong.

Q. Didn't you take and add up these percentages on the right hand side and divide them in order to get your average?

A. That is the average per cent. That is what happened, Mr. Bee.

Q. Let's go to the last two pages of the Exhibit 222.

You have not attempted to weight the movement—this is pages I-1, I suppose it is, the last two pages, you have not attempted to weight the average movement of these commodities, have you?

A. No.

Q. You have simply taken the aggregate of the scales that you have used.

A. That is correct.

Q. And one of the heavy movements is grain, which formed 8.03 per cent, or wheat, of the Texas total tonnage, and 2.57 per cent on coarse grains.

A. That is correct.

[fol. 5396] Q. And those scales in Texas are what is known as the bobtailed scales, are they not?

A. Yes.

Q. They run out to a distance of 350 miles and blanket for all distances beyond.

A. That is correct.

Q. And those matters are now before this Commission in a 13th Section proceeding?

A. Yes.

Q. By the use of your percentages you have assumed that there is an average distance of all commodities moved in Texas as are moved in C.F.A. territory.

A. I am assuming that would be the result if that was the average distance in both territories.

Mr. Bee: Thank you. That is all.

Chmn. Alldredge: May I ask you one further question?

The only comparison of rates on citrus fruits moving from some Texas producing point I suppose to its destination is with local rates within Central Freight Association Territory. Do you think that comparison has any probative value?

The Witness: It is for comparative purposes only. It represents the going rates in both groups of both territories.

Chmn. Alldredge: Do you think there would be any [fol. 5397] movement of citrus fruits of carloads locally in C.F.A.?

The Witness: I am quite sure there would not be any to speak of.

Commr. Aitchison: This item is fruits and vegetables.

Chmn. Alldredge: He has one on citrus fruits.

Mr. Bee: Page C-32. That same comparison is true as to cotton and as to cottonseed meal and cake and bulls, and other commodities that are peculiar to either of the two territories, is it not, Mr. Roberts?

The Witness: Yes, we are not attempting to say to this Commission that these commodities that are included in this exhibit move freely in the C.F.A. territory.

Mr. Barron: That is originate in the C.F.A. territory.

The Witness: That is right.

By Mr. Bee:

Q. And you made a separate comparison on sheet—we will take a couple—take hogs and calves, and you took stone rates and feeder livestock rates, as well as the edible livestock rates; you took them all.

A. Because we have all those commodities and they move freely in Texas.

Q. And you have not in this Exhibit tried to indicate whether the rates were fixed by the Texas Commission or whether they were voluntarily fixed by the railroads.

Mr. Barron: Intrastate?

Mr. Bee: Yes.

[fol. 5398] Mr. Barron: You know we can't voluntarily fix rates in Texas.

Mr. Bee: I don't know anything of the kind.

The Witness: That is correct.

Mr. Barron: That is correct.

By Mr. Bee:

Q. Let's see if that is correct. In the sugar case you decided the railroads should reduce the rates in Texas, did you not?

A. That was part of a general reduction, as you well know.

Q. On sugar alone?

A. Yes.

Q. And there was prepared in your office on the 18th day of September a petition to the Texas Commission to permit you to reduce the rates on sugar throughout the state. You sent that to Washington and then there was class parity upon that and they gave you the authority on the 19th and you then called it an order of the Texas Commission, didn't you?

A. Yes.

Q. And that is the way all your rates were reduced in Texas.

A. That is correct, but no rate is in effect in Texas until it is approved by the Railroad Commission of that state.

Chmn. Alldredge: Somebody told me it had to be prescribed by the Texas Commission.

The Witness: That is true.

Mr. Bee: That is true. They fix the rates.

[fol. 5399] Commr. Aitchison: You are excused.

(Witness excused.)

Commr. Aitchison: We will suspend until 2 o'clock.

(Thereupon at 12:30 o'clock p.m., a recess was taken until 2 o'clock p.m., the same day.)

[fol. 5400] Afternoon Session

Commr. Aitchison: Anything further on behalf of Southwestern Railroads?

Mr. Hughes: Nothing further.

Commr. Aitchison: Possibly we had better ask Dr. Edwards to come on and finish up this phase.

DR. FORD K. EDWARDS resumed the stand and testified further as follows:

Direct examination (continued)

By Mr. Smelker:

Q. Dr. Edwards, the two-page statement headed "Data Furnished in Answer to a Request of Mr. Grubb of the Louisville & Nashville Railroad," that is in answer to the requests he made upon your recent cross examination, is that right?

A. Yes, sir.

Q. That has been distributed and may be copied into the record, I understand?

A. Yes, sir.

Mr. Grubbs: That is agreeable with me.

(Data Furnished by Mr. Ford K. Edwards in answer to a request of Mr. Grubbs of the Louisville & Nashville RR.)

"Question No. 1: Refer to Exhibit 196 and the table headed 'Fully Distributed Costs' appearing at the top of page 4. A computation of the fully distributed costs, for the East, including New England and Pocahontas Territory [fol. 5401] would show the index of cost based on the assumed average loads to be 95. The index of costs based on the actual average loads would also be 95.

"Question No. 2: See Exhibit 196, page 5, data showing a comparison between the East, excluding Pocahontas Territory, and the South, excluding Kentucky.

"Mr. Grubbs has requested that we check his computations based on my Exhibit 195 showing the costs for the South, excluding the State of Kentucky, to be 108.34 per cent of the costs for the East, including New England and the Pocahontas Territory.

"These costs are based upon a box carload of 25 tons and a gondola carload of 50 tons hauled a distance of 300 miles, equal weight being given to the movement in each type of equipment.

"Mr. Grubbs has also requested that we check his computations based on my Exhibit 195 showing the costs for the South, excluding Kentucky, to be 109.27 per cent of the cost for the East, including New England, Pocahontas and Kentucky.

"These computations are similarly based on a box carload of 25 tons and a gondola load of 50 tons hauled a distance of 300 miles equal weight being given to each. These computations are correct.

"Question No. 3: Mr. Grubbs requested that we show [fol. 5402] our computation of the tons bridging the South consisting of petroleum and petroleum products. These figures may be computed directly from my Exhibit 195, Table 3, page 13, by subtracting the count of revenue tons excluding bridge traffic from the count of tons including bridge traffic.

"See columns (8) and (9). I have made such computations for Commodity Classes Nos. 380, 450, and 451, and find that the count of bridge traffic computed for these commodities constitutes 2,305,195 tons, or 1.5 per cent of the total count of tons in the South.

"I should like to make the additional statement that the amount by which we expanded the petroleum tonnage to account for those tons not included in the statement of tons originated or terminated as shown in Statement No. 40100 constitutes 1.9 per cent of my total count of all tons carried in the Eastern District, Southern District, 2.8 per cent of my total count of all tons carried in the Southern District, and 3.7 per cent of my total count of all tons carried in the Western District.

"These percentages are based upon a comparison of the figures shown in Freight Commodity Statistics, Statement No. 40100, and the figures shown in my Exhibit 195, page 13, for Commodity Classes Nos. 360, 450, and 451.

"Question No. 4: Refer to Exhibit No. 196, page 33, item 38. The names of the Class I railroads referred to are as follows:

[fol. 5403] "Eastern District:

Baltimore & Ohio R. R.
Boston & Maine R. R.
Chicago & Eastern Illinois R. R.
Erie R. R.

New York Central R. R.
New York, New Haven & Hartford R. R.
Pennsylvania R. R.
Pere Marquette Ry.

"Southern District:

Atlantic Coast Line R. R.
Cincinnati, New Orleans & Texas Pacific Ry.
Florida East Coast Ry.
Georgia Southern & Florida Ry.
Illinois Central R. R.
Louisville & Nashville R. R.
Norfolk & Western Ry.
Seaboard Air Line Ry.
Southern Ry.
Yazoo & Mississippi Valley R. R.

"Western District:

Atchison, Topeka & Santa Fe Ry.
Chicago & North Western Ry.
Chicago, Burlington & Quincy R. R.
Chicago, Great Western Ry.
[fol. 5404] Chicago, Milwaukee, St. Paul & Pacific R. R.
Chicago, Rock Island & Pacific Ry.
Denver & Rio Grande Western R. R.
Great Northern Ry.
Missouri-Kansas-Texas R. R.
Missouri Pacific R. R.
Northern Pacific Ry.
St. Louis-San Francisco Ry.
St. Louis Southwestern Ry.
Southern Pacific.
Texas & New Orleans R. R.
Texas & Pacific Ry.
Union Pacific R. R.
Western Pacific R. R.

Mr. Smelker: Now, the one-page statement that has been distributed, I understand there are no objections to that, no objection to its being copied into the record.

Commr. Aitchison: If there is no objection, that will be done.

(Statement of Mr. Ford K. Edwards.)

"I should like to refer to Mr. Heywood's Exhibit No. 215, page 6, wherein he shows the ratio of Southern Region cost to Eastern District cost, including the Pocahontas Region, to be .982. These figures are based on the use of the cost data appearing in my Exhibit 3, Table 27 and exclude con-
[fol. 5405] sideration of l. c. l. traffic.

"I have checked Mr. Heywood's exhibit and find nothing wrong with his computations. However, I should like to point out that Mr. Kennedy in Exhibit 181 made comparisons which were based not only on the use of cost data from my Exhibit 3 but also on the use of cost data from my Exhibit 13, including both carload and less-carload traffic.

"For this reason I have re-worked Mr. Heywood's exhibit to show the results based on the use of the cost data in my Exhibit 13 and including both carload and less-carload traffic. The effect on Mr. Heywood's figures is very slight. The figure of .982 appearing at the foot of page 6 of Exhibit 215 is changed to .994.

"I should like to refer to Mr. Heywood's Exhibit 215, page 7, showing the ratio of Southern Region cost to Eastern District cost, excluding Pocahontas Region, to be .913. These figures are based on the use of my Exhibit 3, Table 87.

"I should like to point out that had the cost data in my Exhibit 13 been used and both carload and less-carload traffic included, the figure of .913 would change to .919."

Mr. Smelker: Cross examine.

Cross-examination.

[fol. 5406] By Mr. Norman:

Q. Just for my information, at whose request did you make this recalculation of Mr. Heywood's exhibits?

A. I did not make that at anyone's request.

Q. That was done on your own motion?

A. Yes; that is right.

Mr. Norman: That is all.

Commr. Aitchison: You are excused.

(Witness excused.)

Commr. Aitchison: We might as well finish up the Southern shippers.

Mr. Widell, are you ready?

C. E. WIDELL resumed the stand and testified further as follows:

Commr. Aitchison: You have been sworn, haven't you, in this case?

The Witness: Yes, Mr. Chairman. I testified at Columbus.

Direct examination.

The Witness: I testified in these proceedings at Columbus, Ohio, during November, 1942.

I shall be very brief in view of the desire of every one to get away, and perhaps take much less time than I had requested.

I would like to have the record show, in view of what has [fol. 5407] been testified regarding segregation of commodities and traffic, either class rate traffic or such traffic as is subject to exceptions, and straight commodity rates, and to state that in our segregation of the 1941 tonnage in the South, on which the general rate levels are lower than in the North, excluding coal and coke, there was over 42 per cent—to be exact, 42.3 per cent—of this so-called low-grade, heavy-loading commodities.

That represents such a substantial part of the Southern carriers' revenues and tonnage, that due consideration must be given to this segregation of commodities, at least, from a classification standpoint.

Today the rates in the South are such that if we had uniform rate scales, that is, Class rate scales, and if we had a classification set up to correlate with the present levels in the South as compared with in the North, we would have to assign at least 12 major basic commodities in the South to a lower level within the South than within the North.

This gave rise to further tests in connection with the testimony at this hearing——

Commr. Aitchison (Interposing): Are you referring to some exhibit that is in the case, Mr. Widell?

The Witness: Yes. I am referring to the testimony, probably more the general testimony, now, of—Well, of all the witnesses. They all had something to say, especially Mr. Hart, and I just commented in passing that uniformity [fol. 5408] *as* such as we have heard about in this hearing would be a most difficult thing, because it would destroy the authority and the jurisdiction of our State Commissions to a great extent.

At least, that would be the practical effect.

The differences in rates within each Territory are great because the various States have different rate bases. All of this is a healthy condition, we ought not — destroy it, so that even if we could start out with uniformity in a short time we would have departed from it in response to local conditions, State or Regional.

Commr. McConnaughy: Could not the States make exceptions, even though you attempted uniformity?

The Witness: Yes, but it goes to the point, then, of where we would end up with our theory of uniformity.

We would not have uniformity.

Witness Henderson indicated quite plainly that there had been no industrial opposition to the general Class Rate investigation in the South prior to April, 1940.

I have before me the Southern Traffic League Circular No. 550-A, reporting the meeting of the Southern Traffic League at Charlotte, North Carolina, on March 15, 1939.

That meeting was illustrious because at that meeting was adopted a recommendation to request this Commission to institute the proceeding which is here under hearing.

Commr. Aitchison: When was that?

[fol. 5409] The Witness: March 15, 1939, as a result of which the Commission acted upon those recommendations and instituted this proceeding.

In that meeting, which was composed of mixed industrial men, Chambers of Commerce, and so on, there were 21 who voted.

The report says the question was put to a vote, and the recommendation of the Committee carried by 16 to 5, but the report shows that there had been considerable discussion and strong opposition to the whole proceeding on the ground that, as we have heard at this hearing, the Southern carriers could not stand a substantial reduction in the Class Rates without making up the lost revenue through increases in commodity rates.

Mr. Henderson referred to truck bodies built in Nashville, and, as I understood him, he left the impression that the outbound movement, consisting of driving away the trucks finished, was perhaps influenced by the rate level on these finished trucks from Nashville to Metuchen, New Jersey.

This is war material. The order came from the Contract Ordnance Department, Procurement Division, at Metuchen,

New Jersey. Whether the trucks ever reached Metuchen, New Jersey, or not, of course only the War Department knows.

Phillips & Buttorf had nothing to do with the outbound movement. I say that because I happened to have something to do with the very beginning of this in the assembly [fol. 5410] of raw materials, and as I say, the War Department character of the movement is such that it is impossible to divulge all of the sources, but I make the definite statement that if it was a question of freight rates from Nashville, then only the Procurement Division at Metuchen, New Jersey, can say that.

We understood that it had nothing to do with it; in fact, we don't know where the trucks have gone to.

Chmn. Alldredge: May I ask you something there?

Does the War Department, however, in taking bids specify some point of delivery and evaluate the bids on a delivered price?

The Witness: In this case, Mr. Commissioner, the bid was "delivered at Nashville", just a finished truck f.o.b. Nashville.

Chmn. Alldredge: I understood him to say that that was changed; it was first set somewhere else and then changed to f.o.b. Nashville.

The Witness: There may have been some negotiations, of course, that I don't know about, but I do have definite knowledge of this, that when Phillips & Buttorf are finished with the body which they assemble and put on the chassis, that they notify the Procurement Division at Metuchen, and tell them how many they have ready, and the War Department takes over.

Chmn. Alldredge: The custom is generally to take bids on a delivered basis at some point; isn't that true?

[fol. 5411] The Witness: I reckon it is. I know of my own personal knowledge of some, and then again, on other contracts, it is at the factory door, practically. I have another Government War Company, as it were, on my hands, too, at Lewisburg, Tennessee, so that, of course, I know what our practices are with respect to those contracts.

I want to make reference to Witness McDonald's statement about the Southern States Industrial Council and say this: Positively and definitely it is not railroad-controlled, but in the South we do consider the railroads as part of Industry.

We have some railroads as members of the Council. We are proud to have them.

Among them is Mr. Ernest Norris who, I think, is one of the directors; and for years Mr. Fitzgerald Hall, President of the Nashville—Chattanooga & St. Louis Railway, has been a staunch friend; but so far as the direction on their part or their influence as such in the affairs of the Council is concerned, one might say it is nil, because the Council is composed of executives of Southern industries.

No one lower in rank than vice-president or the top executive officer may exercise any voice whatever in the Council affairs.

I have been with the Council, and I, of course, speak from knowledge.

The resolution that Witness McDonald spoke of as from [fol. 5412] the meeting at which appeared Mr. J. O. Hendley and Mr. Backman, of Atlanta, was really not a resolution.

The two gentlemen appeared at that meeting. It was a meeting of the Executive Committee of the Council. I was there. I came in from Nebraska from the University Conference.

The Southern Governors had asked for the support of the Council in this proceeding. Mr. Hendley was heard. Mr. Bachman was heard. They are held in high esteem; their counsel is valuable; they were given every consideration, but the decision was not to support the Southern Governors in this proceeding.

Tyre Taylor, Executive Vice-President at that time, was instructed to advise the Southern Governors of the general transportation policy of the Council, so that what was read in the record by Witness McDonald is nothing more nor less than Paragraph 6 of the published Declaration of Policy issued by the Southern States Industrial Council, and is now a matter of record.

The Council went definitely on record at the Columbus hearing in November, 1942, a statement of which is a part of the record.

At the Birmingham Conference, in December 1941, referred to by Witness McDonald, there was never intended to be any resolution coming out of that conference. It was an open forum designed merely for the airing of the views [fol. 5413] of Southern interests in respect of this proceeding, and we were proud to have the Honorable Walter McDonald with us. His views were printed in the pro-

ceedings, and given wide distribution, including all of the exhibits that he had in connection with his statements, and we should be proud to have him with us again.

Mr. Hart's Exhibit No. 220, Sheet No. 1, "Comparison of Mileage Scales on Logs in Southern and Official Territories," his first scale is under the heading of "Southern Scale".

That is not the scale of rates that apply generally on logs in the South. I am sure that Atlanta, Georgia,——

Mr. Norman (Interposing): He didn't say so.

The Witness: He compares it with the Chicago-Northwestern Railway scale, with the Boston & Maine scale, and with the Maine-Central scale. I assume his purpose was merely to show the pattern of rates, as he calls it. I am not quite sure that I know what he means by the "pattern of rates," but I will say this, that what are used in the South and applied generally on logs are the so-called net transit scales, which are approximately one-half of the scales shown under the heading "Southern Scales".

On Sheet No. 2, Table A, comparison of mileage scales on lumber, I want to say this, to make the exhibit definitely clear, that the bulk of the movement of lumber in Southern Territories is 400 miles and under.

[fol. 5414] That also answers, to some extent, the showing on Sheet No. 3, where the long-haul rates are set out from the Mississippi Valley points, and from Montgomery and Dothan, Alabama, to Goldsboro and Winston-Salem, North Carolina.

I don't mean that they do not draw lumber from the Valley. They do. But even the North Carolina furniture factories draw the bulk of their raw materials closer to home.

On Sheet 2, Table B, scrap iron, just to make it clear as to what rates actually moved the tonnage, the bulk of the traffic in scrap iron in the South moves on the 80,000-pound rates, and the bulk of the scrap iron traffic within Southern Territory moves for distances of 500 miles, and less.

Commr. Aitchison: These movements that you have just been speaking about, Mr. Widell, are within the Southern Territory?

The Witness: Within the Southern Territory.

Commr. Aitchison: And not other Territory?

The Witness: No. There is some scrap iron moving

from the South today to Official Territory, but it is contrary to the usual.

Commr. Aitchison: Plenty of lumber moves from the South?

The Witness: Yes, sir; lumber moves in heavy volume from the South to the North, and generally speaking, the level of our north-bound lumber rates is lower, mile for mile, than lumber rates within Official Territory.

[fol. 5415] Chmn. Alldredge: We have had quite a number of scrap iron cases here involving movement from Carolina Territory, Tennessee, and Kentucky, up in Official Territory.

The Witness: Yes, what might be termed, Mr. Commissioner, the Border Territory; but from the Deep South, generally, there is very little movement.

On Sheet 5, just taking one commodity, the shipper designation letter "M", third from the bottom, I notice that Witness Hart shows prevailing rate levels as column 55 within the South. That is the classification rating on the articles set out under the description, but we have concluded commodity rate adjustments from two very important tank producing points: Chattanooga and Birmingham; to Ohio and Mississippi River crossings; St. Louis, Missouri; and Chicago and Milwaukee; and, in fact, all of what is known as Illinois Freight Association Territory; and also to the Border Territory East of Cincinnati, including the Virginia cities and including Washington, D. C.

I had something to do with that adjustment, and our investigation indicated that there was little movement or probability of movement of tanks of this description, and also tanks thinner than No. 16 gauge, which we included in our Commodity Rate Adjustment to destinations in strictly "Official Territory," that is, CFA Trunk Line and New England.

The industry was of such a nature that it was just going absolutely contrary to the strong drift of the current, but [fol. 5416] there is and has been, and we, of course, assume, will be in the future a movement from these two important Southern points to all of the territory to which we have obtained rates on both carloads and less-carloads, mile for mile, the same as within Official Territory, except that to Illinois Freight Association Territory the rates were made not quite mile for mile, but approximately 105 per cent of the Northern level.

Those rates were made subject to what we term Rule 27, and apply to all intermediates, with the result that the Ohio River and the Border Adjustments are blanketed back considerably into the South; that is, at least into Kentucky and the Northern points of Tennessee and into North Carolina.

Now, so far as concerns the movement of tanks within Southern Territory on Column 55, or Fourth Class, or No. 2 gauge, but not thinner than 16 gauge, as described in this exhibit, there would be probably some reductions in the freight charges, if our rates were lower; but the competition that Chattanooga and Birmingham meets in Southern Territory is from the tank builders along the Border, Louisville, Cincinnati, and other northern points, who come down on exactly the same level as we have in the South.

If our rates were all reduced to the Eastern Scale level, then the spread that we now have at Southern producing points as against the Northern producing points would be diminished substantially, so that relatively we would be worse off.

[fol. 5417] That completes my statement. Thank you.

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. Norman:

Q. I want to get this thing straightened out, about the Southern States Industrial Council. Did that organization ever, by any official action, authorize you to, in their behalf, oppose the effort of the South to secure a re-adjustment of these Class Rates?

A. I don't believe I have testified that.

Q. No, but you came here and filed the statement of——

Commr. Aitchison (Interposing): Wait a minute. What is the fact?

The Witness: The fact is, Mr. Chairman, that at the Columbus hearing I made a statement for the Council on instructions from the officers.

By Mr. Norman:

Q. What officers?

A. Of the Council. You have seen that statement.

Q. Signed by one man, Mr. Barr, and the statement itself does not say that they oppose this proceeding.

A. There is a letter that is addressed to me by the Secretary of the Southern States Industrial Council. I made Mr. Barr's statement my own, as expressing the views of the Council in the proceeding. That is the only extent to which the Council has definitely stated its position in this proceeding.

[fol. 5418] Q. And only through the Chairman of the Committee, and not by any action of its Board of Directors?

A. Mr. Norman, if you go behind the Secretary's Directions to me,——

Q. (Interposing:) I am going behind it.

A. —Then you will have to call in some one else, because I am sure the Secretary would not be authorized by himself, and the Chairman of the Transportation Committee——

Commr. Aitchison (Interposing): What you mean to say is that your direction came from the Secretary of the Council?.

The Witness: Who has authority to act.

Commr. Aitchison: You can say "Yes".

By Mr. Norman:

Q. Has there ever been any action by the Board?

Commr. Aitchison: Is that right? Let me get an answer to this.

Mr. Norman: I thought you had finished.

Commr. Aitchison: Your authority came in the shape of a direction to you, signed by the Secretary of the Council, as I understand you?

The Witness: That is correct, sir.

Commr. Aitchison: All right, now, Mr. Norman.

By Mr. Norman:

Q. And he simply directed you to present the statement which you did present, prepared by Mr. Barr?

A. May I read this in the record?

[fol. 5419] Commr. Aitchison: If it is in writing, you had better read it into the record.

The Witness: Southern States Industrial Council letterhead, 1103-1111 Stahlman Building, Nashville, Tennessee.

November 12, 1942.

"Mr. C. E. Widell,
Traffic Consultant,
1100 Stahlman Building,
Nashville, Tennessee.

"Dear Mr. Widell:

"I enclose statement dated November 12, 1942, by Chairman J. U. Barr, Transportation Committee, defining position of the Southern States Industrial Council in transportation matters generally, and particularly in respect of the pending general rate investigation.

"I am instructed to request you to represent the Council, and offer this statement for the record, at the hearings before the Commission, beginning Monday, November 16th, at Columbus, Ohio.

"Yours truly, (Signed) C. C. Gilbert, Secretary."

By Mr. Norman:

Q. I now ask you whether there has ever been any action by the Board of Directors of the Southern States Industrial Council.

A. I am not a member of the Board of Directors, not a member of the Council as such.

[fol. 5420] I merely acted as their representative in presenting their views.

Q. I will ask you: Don't you know that it has been before the Board of Directors of the Council and they refused to take such action?

A. No, sir; I do not know that.

Q. You have been very active, have you not, throughout the South, and throughout these proceedings in trying to stir up objection to the position taken here by the Southern Governors Conference?

A. That might be your view of it, but it isn't mine.

Q. Haven't you gone to the extreme length within the last few days of telegraphing each one of my clients and asking them, the several Governors of the States, to withdraw from this proceeding?

A. No, sir; I didn't telegraph your clients. I telegraphed the Governor of Tennessee, my own Governor, and sent

copies to the other Governors of the sovereign States of the South. They happen to be your clients, but I did not address them as your clients, but in their official capacity.

Q. But you were asking them to take action as my clients to withdraw from this case, follow your advice instead of mines isn't that so?

A. If you have a copy of the telegram that I sent to them, you can read it.

[fol. 5421] Q. You didn't even have the decency to send me a copy of it.

A. It wasn't addressed to you.

Q. But as counsel for them, I had a right to have it.

A. I think I have a copy of it.

Q. I don't want it. I just want to know if you didn't do that.

A. Not your clients; no, sir.

Q. Aren't the Governors in those States my clients in this matter, and you were addressing them about this matter?

A. I was addressing the Governors as public officials. I certainly have a right to do that, Mr. Norman, my own Governor.

Mr. Norman: That is all.

Commr. Aitchison: Anything further with Mr. Widell?

(No response.)

You are excused.

The Witness: Thank you, sir.

(Witness excused.)

Commr. Aitchison: I think that brings us down to you, Mr. McCollester.

CHARLES E. BELL resumed the stand, and testified as follows:

Mr. McCollester: Mr. Chairman, Mr. Charles E. Bell has been previously sworn and testified before in this proceeding.

He has four exhibits which have been distributed, and [fol. 5422] which I would suggest we mark now.

The first exhibit is the sheet bearing in the upper right-hand corner description "Revised and Corrected Page 18 of Exhibit No. 164."

Would you have that a separate exhibit, or let it be substituted for page 18 of the original exhibit?

Commr. Aitchison: It is not deemed good practice to try to substitute. We will make this Exhibit 224.

Mr. McCollester: The next exhibit to to be marked, which will be Exhibit No. 225, I believe, it two sheets, with the caption on the first sheet, "Section 1, Number of Gross Ton-Miles Hauled in Transportation by the Chesapeake & Ohio, and Norfolk & Western Railway in CFA Territory."

(Exhibits 224 and 225, Witness Bell, marked for Identification.)

Mr. McCollester: The third exhibit, which should be No. 226, is the small single sheet, Exhibit "Statement Showing Tons of Carload Traffic," and so forth.

(Exhibit 226, Witness Bell, marked for Identification.)

Mr. McCollester: The last exhibit, which will be No. 227, is an exhibit of two sheets, with the caption "Statement Showing: Part I. Railroads in Southern and Central Regions."

(Exhibit 227, Witness Bell, marked for Identification.)

Mr. McCollester: I would say for the information of the Commission and all concerned that, with the exception of the exhibit marked No. 224, which is, as appears, a cor-
[fol. 5423] rection of Exhibit No. 164, Mr. Bell's testimony and Exhibits will be directed to the testimony of Dr. Edwards.

I should like to say further, in order that our position may be clear that we are, of course, not trying to indulge in argument on the record with Dr. Edwards as to the soundness of his fundamental formula. I am reserving that for brief, but if we don't debate with him on the record it does not mean that we accept it as sound.

Direct examination.

By Mr. McCollester:

Q. Mr. Bell, have you any comment on the exhibit marked 224, which is the corrected page 18 of your exhibit No. 164?

A. Yes. After the Columbus hearing, Mr. Warren Wagner called to my attention a glaring error in page 18 of

my Exhibit No. 164, and I investigated and found that my calculating machine operator in error had added together the figures for the Great Lakes Region and the Eastern District, in getting at the combined figures of the Central-Eastern and Great Lakes Regions, which I did not discover before I left for Columbus.

I have made the correction in revised and corrected page No. 18, and I have also included as information figures for the Eastern District as a whole, and I thank Mr. Wagner for calling it to my attention.

Commr. Aitchison: May I ask just one question, Mr. [fol. 5424] McCollester?

Mr. McCollester: Yes, sir.

Commr. Aitchison: You show the figures for the Eastern District and in an adjoining column you show the Central-Eastern and the Great Lakes Region, and evidently there is still one more territory there, or something to be accounted for.

The Witness: I have shown separately the New England Region.

Commr. Aitchison: And the difference represents New England?

The Witness: Yes, sir; the difference would represent New England.

By Mr. McCollester:

Q. Mr. Bell, your Exhibit No. 225 goes to the problem of the effect of including in the costs for the Eastern Territory, the operations of the Chesapeake & Ohio, and the Norfolk & Western traversing C. F. A. Territory, that is, Central Freight Association Territory, does it not?

A. In part. There are other parts of the exhibit, but that is the first part.

Q. Will you proceed to explain and comment on your Exhibit No. 225?

A. My testimony at transcript 3616 to 3622, inclusive, dealt with various territorial allocations, and are referred [fol. 5425] to in Dr. Edwards' Exhibit 196, items 2, 3, and 4.

As to the effect of including in the costs for Eastern Territory two operations of the Chesapeake & Ohio and Norfolk & Western traversing Central Freight Association Territory, that is covered by my testimony at pages 3616-3619.

I am without comparable figures similar to those shown by Dr. Edwards for the various territories covered by his exhibits, but I have prepared an exhibit indicative of the effect of including in the C. F. A. operations of the C. & O. and N. & W. in Eastern Territory No. 2.

On page 23 of Exhibit No. 196, Dr. Edwards admits that the consist of the Chesapeake & Ohio Traffic in Indiana, Ohio, and Illinois approximates that of the Chesapeake & Ohio traffic in West Virginia and Kentucky.

The same is true of the consist of Norfolk & Western traffic in Ohio, as compared with West Virginia and Eastern Kentucky.

Exhibit No. 225 is in three sections, the heading of each being self-explanatory.

I should explain, I think, how the assumed average mileages were determined.

Section 2, of page 2, Exhibit 165, shows the respective miles of Chesapeake & Ohio and Norfolk & Western in Central Freight Association Territory are 730.1 miles, and 262 miles, respectively.

[fol. 5426] Throughout Exhibit No. 225 an average mileage of 230 has been assumed for the Chesapeake & Ohio. It is 230.3 miles from Portsmouth, Ohio, to Toledo.

Practically all of the lake-billed coal moves over this line, as well as the bulk of the movement of track-delivery coal for Toledo and Michigan destinations.

The Chesapeake & Ohio distance from Cincinnati to Chicago is 285 miles.

Chicago is a heavy consumer of Pocahontas Region coal originated on the Chesapeake & Ohio, and Norfolk & Western.

Although some coal may move by junctions other than Cincinnati to Chicago and to other points in Indiana and Ohio, also to points in Western Trunk Line Territory, and although some coal for Ohio may move for shorter distances than the Toledo distance, from my own knowledge of the coal traffic I am satisfied that the average haul of the Chesapeake & Ohio in Central Freight Association Territory is not less than 230 miles; in fact, I believe it to be greater.

Lake-billed coal from the Norfolk & Western moves principally via Columbus, Ohio, which is 99 miles from North Kenova, Ohio.

The same is true of most of the Ohio coal. Considerable quantities are shipped to Cincinnati, and through Cincin-

nati to destinations in Indiana, Illinois, and Western Trunk Line Territory, as well as moving via Columbus.

[fol. 5427] I have arbitrarily assumed an average haul of the Norfolk & Western on all coal in Central Freight Association Territory is 33⅓ per cent greater than the haul of 99 miles from Portsmouth, Ohio, to Columbus, thus arriving at an assumed average haul of 132 miles, which I really believe to be an under-statement.

Section 1 of Exhibit No. 225 shows that the gross ton miles involved, based on the assumed average miles, would have been 27.58 per cent of the total gross ton miles for these two railroads in 1939.

These gross ton mile figures do not include traffic originated and terminated by the Chesapeake & Ohio, and Norfolk & Western in Central Freight Association Territory, nor any through or over-head traffic.

Section 2 of the exhibit shows that bituminous coal tonnage originated, constituted only 45.63 per cent of the total of all tons carried by the Chesapeake & Ohio, and Norfolk & Western.

Considerable of the remaining 54.37 per cent originated and terminated, or was handled over the portions of these lines in C. F. A. Territory.

I am without information showing the volume of carload and less-carload box car traffic transported over the C. F. A. portions of these lines.

Section 3 of the exhibit shows how, based on loading of 25 tons, that the carload unit terminal expense for the [fol. 5428] Pocahontas region was 75.59 per cent of the expense in Eastern Territory 2.

The line-haul expense was 64.06 per cent of the line-haul expense per 100 lbs. per mile in Territory 2.

The less-carload expense, based on 5 tons for Pocahontas region was 97.3 per cent, and 78 per cent, respectively, of the corresponding cost in Eastern Territory 2.

Commr. Aitchison: That is the line-haul expense, isn't it?

The Witness: Both line-haul and terminal expense, Mr. Commissioner. The terminal expense is a figure of 97 per cent and the line-haul expense would be 78 per cent.

At page 110, Item 2, Dr. Edwards' Exhibit No. 196, he refers to my testimony, transcript 3619, relating to railroads which overlap territorial boundaries. He refers to a similar point made by Witness Kennedy, Item 4, of Dr. Edwards' Exhibit No. 196.

In Item 3, Dr. Edwards says that at transcript 3621 of my testimony I raised the question as to why the Southern Railway was not asked to make certain additional separations.

All of my testimony on the territorial separations of railroads, other than the Pocahontas region railroads, appears at page 3619 through the first part of page 3622 of the record, in which I specifically mentioned railroads shown in Section 2, page 3, of my Exhibit No. 166, namely, the [fol. 5429] R. F. & P., Southern, L. & N., M. & O., and Y. & M. V.

On page 3621 I specifically referred to the Southern Railway, simply as illustrative of all the railroads I had mentioned, the operations of which had not been segregated according to rate territories.

Item 4, page 22, of Exhibit No. 196, in answer to Witness Kennedy's testimony, Dr. Edwards refers only to the L. & N., and Southern Railway. He refers also to the Chesapeake & Ohio, which I did not include in my testimony on the pages of record I have mentioned.

Dr. Edwards says that his working papers indicate that 4.3 per cent of the L. & N. miles of road, and 5.8 per cent of the Southern Railway miles of road are in Eastern Territory.

My computations show that the L. & N. mileage north of the Ohio River is 203 miles out of a total of 4,898 miles; therefore the miles north of the Ohio River are 4.14 per cent of the total.

Dr. Edwards' costs for the L. & N. are computed on the basis of 102 miles north of the Ohio River, or about 2 per cent of the total mileage.

As I testified, transcript 3620, also shown in Section 2, page 3, of Exhibit 166, Dr. Edwards has failed to include the most important mileage north of the Ohio River over the L. & N., namely, the lines from East St. Louis, Illinois, to McLeansboro, Illinois, 101 miles.

[fol. 5430] Coming to the Southern Railway, I don't know how Dr. Edwards arrived at 5.8 per cent.

Page 8, of my Exhibit No. 166 shows that the Southern railway operated 6,517 miles of road in freight service in 1939.

Section 2, page 3, of Exhibit No. 166, shows that the Southern Railway mileage in Official Teritory, is 829.3 miles, which is 12.74 per cent of its total mileage; 409.8

miles of line is between New Albany and East St. Louis and branches.

This is 6.29 per cent of Southern's total mileage.

Now, I have no means of ascertaining the proportion of the Southern Railway traffic handled over its lines in Virginia in Official Territory. I may say that the line between Washington, D. C., and Lynchburg, is a trunk line of the Southern, over which it handles its traffic between Eastern Trunk Line Territory, and the South, and is a very heavy density line.

With respect to the Southern Railway Line, north of the Ohio River, between New Albany, Indiana, and East St. Louis, Illinois, Table 3, page 17 of Dr. Edwards' Exhibit No. 10, I think it is, shows for 1940 a summary of originated and terminated tonnage of all Southern Railway System lines, including the A. G. S.; Cincinnati, New Orleans, and Texas Pacific; Georgia, Southern and Florida; New Orleans and Northeastern; and Southern Railway.

Schedule 541 A of the Annual Report of the Southern Railway for 1940, shows that, excluding other system lines, [fol. 5431] the sum of originated and terminated tonnage on this entire line was 40,419,044 tons; and in the States of Indiana and Illinois, 3,122,834 tons, which was 7.73 per cent of the total of the Southern's tonnage originated and terminated traffic.

In this connection also the fact must not be overlooked that the line between New Albany and East St. Louis is a very important line for the handling of through traffic.

I may mention also that in 1939 30.35 per cent of the total tonnage of bituminous coal originated on the Southern Railway originated on this line between New Albany and East St. Louis.

Commr. Aldridge: What percentage?

The Witness: 30.35 per cent.

One of the railroads referred to in my previous testimony is the R. F. & P. which is in Official Territory instead of being in Southern Territory, where it is allocated by Dr. Edwards.

Although this line is only 110 miles long, it is a very important bridge line over which the traffic between the East and South is funnelled, when transported by the railroads leading from Richmond, Virginia, to the South.

That is other than the Southern Railway, but even some of the Southern Railway traffic is handled over that line.

Group III of the Territorial Summary for Southern Territory—Dr. Edwards' working papers—shows 1,306,490,587 gross ton-miles for the R. F. & P. at a cost of 1.23 mills [fol. 5432] per revenue gross ton mile, compared with the Southern territorial average of 1.62 mills.

The territorial summary also shows that there are a greater number of other group unit costs for the R. F. & P. lower than for the Southern territorial average.

I mentioned in my previous exhibit and testimony the line of the Mobile & Ohio. 151.42 miles, or 12.89 per cent of the total mileage, is north of Cairo, Illinois.

The total mileage of the M. & O., and the Gulf, Mobile & Northern, which now are operated as the Gulf, Mobile & Ohio, is 1,981 miles.

Thus the line north of Cairo constitutes 7.64 per cent of the total mileage.

Table 3, of Dr. Edwards' Exhibit No. 10 shows that out of the total of 7,844,827 tons of freight originated and terminated by the Gulf, Mobile & Northern, 12.24 per cent originated and terminated in Illinois.

Here again the line of the Mobile & Ohio north of Cairo forms a part of one of the most important routes for the handling of traffic between the South and the territory north of the Ohio River and west of the Mississippi River, and is really almost in the nature of a bridge line operation.

Dr. Edwards stated in Exhibit No. 196, Item 4, that the inclusion of the Chesapeake & Ohio operations in Ohio, Indiana, and Illinois, would have a negligible effect on cost [fol. 5433] scales and that statement is in harmony with similar statements appearing throughout Exhibit No. 196, and his previous testimony.

In Item 4 of his answer to Witness Kennedy, Dr. Edwards says that in as much as the difference in costs between adjoining territories of the L & N, and the Southern Railway, *are* very small, it is not believed that the expense of separating out "these small segments of railway would be warranted."

He refers to that statement in connection with my testimony at pages 3619 and 3622 of the record, which related to the Southern Railway, the R F & P, and the Mobile & Ohio.

In the same answer to Witness Kennedy, Dr. Edwards says the effect of treating the portion of the Chesapeake & Ohio in Eastern Territory as being within that territory,

or as an alternative, including it in the Pocahontas territory would be negligible.

In his answer, Item 3, page 111, to my testimony, transcript 3621, he says separations for the Southern Railway were not made because of statistical difficulties, and, secondly, because the amount of traffic and expense involved were of negligible proportions relative to the total for the territories; that as there proved to be little difference in relative costs for the two territories involved transfer of a small segment of one line from one territory to another would not affect the results; in other words, seemingly, Dr. Edwards shows a disposition to brush off what he [fol. 5434] considers to be small differences in costs.

While, as Dr. Edwards has contended, the allocation of some particular railroad or portion of a railroad, to a territory other than that in which the operations *take place*, may have *only a* negligible effect upon the total expense for the respective territories, my whole point has been, and is, that the aggregate of these instances is bound to have an appreciable effect.

For example, Section 2, of Exhibit No. 225, shows that the gross ton miles of the Chesapeake & Ohio, and the Norfolk & Western, within Central Freight Association territory, on coal traffic originated and terminated by these railroads in Southern West Virginia, Eastern Kentucky, and Virginia, aggregated 16,305,356,730 gross ton miles.

This was 5.3 per cent of the total gross ton miles for the Eastern Territory, as shown in Group III, Table 3, of Exhibit No. 13. That may not, in my opinion, be considered negligible.

(Discussion off the record.)

The Witness: Some one, at the first part of this present hearing, raised the question as to whether or not the tonnage, other than coal and coke, originated and handled by the Pocahontas region roads wasn't as great as that of the Southern region railroads. I have had some figures made on that which are covered by my Exhibit No. 226.

[fol. 5435] By Mr. McCollester:

Q. That is one of the points made by Dr. Edwards, is it not, that we eliminate the principal Southern coal-carrying roads from Southern Territory that take a large part of the

traffic other than coal out of Southern Territory, but that situation doesn't obtain in separating the Pocahontas lines from the other Official Territory lines?

A. Yes; and I think he was asked that question as to the proportion of the tonnage. That is what I have undertaken to develop.

Q. That is the purpose of your next exhibit?

A. Yes, sir. I don't think it needs any comment. The exhibit itself is self-explanatory, and shows what it is.

Q. Continue, Mr. Bell.

A. I am through with the part about the effect of the territorial allocation of the railroads.

Commr. Aitchison: Mr. Bell, suppose we are convinced that you are right about that; can we take the Edwards' exhibits and *make the changes that you think should be* made?

The Witness: Mr. Commissioner, there is too much for me and my organization, and with my lack of knowledge of those figures to re-work Dr. Edwards' exhibits. I am simply pointing out some of the infirmities that would be bound to have an appreciable effect on the final showing.

Commr. Aitchison: Are you prepared to show how appreciable?

[fol. 5436] The Witness: The only one I can give any figures on showed that was based on this movement of coal which I had in other records, showing the movement of coal originated on the Chesapeake & Ohio, and Norfolk and Western, that was moved in and through C.F.A. Territory.

I had those in other records, and I undertook to make this computation there which I have shown, and, as I have testified to in Exhibit No. 225.

Taking that coal traffic alone, it amounted to 5 per cent of the total gross ton miles of the Eastern Territory, and over 27 per cent of the gross ton miles of the Pocahontas region.

With terminal costs and the line-haul cost being less in the Pocahontas region, and with the same consist of traffic in the Pocahontas region lines in the Eastern Territory and C. F. A. territory as in the Pocahontas region, and those costs being appreciably lower than the average for Eastern Territory No. 2, I cannot escape the feeling that it would make quite a difference in the costs in the Eastern Territory if those two lines were included; but I should

point out in all fairness, too, as Dr. Edwards has done in his Exhibit No. 195—he has included the Pocahontas region lines along with the Eastern District to show what the effect would be, but he does not show the effect of consolidating the Central-Eastern and Great Lakes region and the Pocahontas region lines, exclusive of the New England [fol. 5437] region.

Mr. McCollester: In other words, Mr. Commissioner, from Dr. Edwards' own exhibits, we have some combinations, or rather, his costs resulting from some different combinations, and there is, therefore, to that extent, the opportunity to argue which combinations are the ones to be taken for the purposes of this case.

We think it can properly be argued that still other refinements should be made in order to enable the Commission to have the full picture before it, assuming, which we do not agree with, that the average costs computed, as Dr. Edwards has done, are basis for prescribing rates in this proceeding.

The Witness: For example, as I mentioned, Mr. Commissioner, there is about 13 per cent of the mileage of the Southern Railway which is within what we term as official rate territory.. That is the lines north of Richmond and north of Lynchburg, and including the lines extending from East St. Louis to New Albany, Indiana.

There is quite a substantial part of the Mobile & Ohio Railroad. The heaviest density line of that railroad, I think, is in that territory, but I have no means of telling just what effect that would have. Then, as I say, I could only pick out the ones where I could get some kind of a cross-section on the coal.

Commr. Aitchison: One of the lowest density lines is [fol. 5438] the Chesapeake & Ohio in Indiana, isn't it?

The Witness: One of the lowest density lines?

Commr. Aitchison: Yes.

The Witness: I would say it was lower density than its line in Kentucky and West Virginia but whether it is one of the lowest density lines in Indiana, I have no means of telling. The commodity statistics don't show the density of the traffic in the various States.

Commr. Aitchison: I thought possibly your general knowledge would enable you to answer it.

The Witness: I would say that it would be much lighter than Southern West Virginia and Eastern Kentucky.

Commr. Aitchison: The physical characteristics of the line are such as to make it a light line?

The Witness: Yes, and it hasn't got the coal traffic.

Commr. Aitchison: And such that the Chesapeake & Ohio doesn't even run its through passenger trains over it?

The Witness: I don't know about its passenger service.

Commr. Aitchison: Isn't it a fact that the Chesapeake & Ohio uses the New York Central lines?

The Witness: For a portion of its mileage, I think.

Commr. Aitchison: From Cincinnati to Chicago—I mean, Indianapolis.

The Witness: It uses it for part of the line. Where it is I don't remember. So far as I know, they have some [fol. 5439] trackage over the New York Central, but I have taken the 230 miles for my comparison, where the bulk of the coal traffic is handled, and that is up to Toledo.

Commr. Aitchison: Can you tell me how many passenger trains a day are operated over that Chesapeake & Ohio line from Cincinnati to Chicago? (Handing witness paper).

The Witness: One each way.

Commr. Aitchison: Is it a through train or local?

The Witness: Local.

By Mr. McCollester:

Q. Mr. Bell, the next phase of Dr. Edwards' testimony that you want to take up, is it not, is the matter of his objection to separating out from the rest of the South the four major coal-carrying roads of the South in the same way that the Pocahontas lines are separated from the other Official Lines?

A. At page 112 of Exhibit No. 196, Dr. Edwards states that the elimination of the four railroads included in Group III, page 5, of my Exhibit No. 166, namely the Clinchfield, the L & N, the Southern, and Illinois Central, would eliminate 83 per cent of the coal and coke carried in the Southern region in 1939. That statement is correct.

Page 3, of my Exhibit No. 165, shows 88 per cent, but it includes all Southern Railway System lines. Based on the Southern Railway alone being included, the figure is 83 per cent.

[fol. 5440] These four railroads originated 96 per cent of the bituminous coal in the Southern region, and all other lines originated only 4 per cent.

Of the total tons originated and terminated on the same railroads, 92½ per cent was on these four railroads.

87 per cent of the total freight revenue on coal and coke in the Southern region accrued to the four railroads in question.

I do not show on page 3 of my Exhibit No. 165 the total tons terminated by the respective groups of railroads, but the total bituminous coal terminated, including coal originated and terminated on the same railroads, and coal received from connections and terminated was 24,233,503 tons, out of which 18,889,239 tons, or 76 per cent, was terminated by the four railroads.

Stated differently, the other 23 railroads in the South originated only 4 per cent of the total tons of bituminous coal originated. They carried only 17 per cent of the total tons carried, and terminated only 24.2 per cent of all the coal originated and terminated, and received from connections and terminated.

Of course, all of Dr. Edwards' figures, and mine as well, are subject to the infirmity that they include coal originated and handled by the Illinois Central System in sections of the country not included in the Southern region, and they [fol. 5441] include coal transported by the Southern Railway on its line in Indiana and Illinois.

If that Illinois Central and Southern Railway coal should be excluded, it would increase the percentage of tons originated by the Louisville & Nashville to the total originated tonnage in the Southern region from 55½ per cent to 71.3 per cent.

Q. Let me interrupt you right there, Mr. Bell, to ask you about a point which I think is covered in the record, but I want to be sure.

Nevertheless, this coal carried by the Southern Railway and the Illinois Central in Official Territory, for whatever effect is has on costs, is reflected in the costs computed by Dr. Edwards for the railroads in Southern Territory?

A. The Southern Railway is, but Dr. Edwards made a segregation for the Illinois Central.

After stating that the elimination of the four railroads would eliminate 83 per cent of the total tons of coal and coke carried in the Southern region, Dr. Edwards goes on to state how much other traffic would be eliminated from the Southern region by the elimination of these railroads, followed by the statement that as three of the railroads,

namely, the L. & N., Southern Railway, and Illinois Central, have average hauls longer than those obtaining for the remaining railroads in the South, the percentage of the total [fol. 5442] ton miles of the commodities I have eliminated, is probably greater than the figures he named would indicate.

Dr. Edwards also says that after eliminating the four coal-carrying railroads from the Southern group, that I have compared the resulting—I think a better word is "remaining"—figures with the Central-Eastern and Great Lakes regions without any adjustments, despite the fact that 47 per cent of their tonnage consists of coal.

He then goes on to say that the elimination of the coal-carrying railroads in the Central-Eastern and Great Lakes regions would remove 94.01 per cent of the coal tonnage handled in the East and 85.63 per cent of all other tonnage carried.

He then enumerates 11 railroads out of the 41 railroads in the Central-Eastern and Great Lakes regions, which he says would be left for the purpose of comparison.

He concludes his discussion by referring to his comments in reply to Witness Day, Item 9, page 97, of his Exhibit No. 196, as to the effect of coal traffic upon costs.

The point of my testimony and my exhibits is to show that the heavy concentration of low-grade, low-expense coal and coke traffic on four railroads in the Southern region, to say nothing of the other low-grade, low-expense traffic—would have the effect of reducing the unit and total expenses of the other twenty-three railroads in the South, that is, if the average unit costs of all of the railroads in the [fol. 5443] South were applied to these 23 railroads which handle a very small proportion of the coal traffic, as well as a small proportion of the other low-grade, low-expense traffic; that, on the other hand, the same conditions would not obtain in the Central-Eastern and Great Lakes regions where coal and coke traffic is diffused over practically all of the railroads, all or most of which also have a back-log of a tremendous volume of other low-grade, low-expense products of mines traffic.

Q. Mr. Bell, let me ask you: You do not mean that, do you, that the elimination of these coal-carrying roads would have the effect of reducing the actual costs of the other 23 roads?

A. No; but *he* would have a computed cost of as much less than the actual costs of those railroad-.

At transcript 3630, I testified that the coal and coke traffic in proportion to the total traffic is much more evenly divided over the lines in Official Territory than in the Southern Region, and that the railroads in the Central, Eastern and Great Lakes regions also have a back-log of a heavy tonnage of products of mines in general, which is not the case with the Southern Railroads.

Dr. Edwards, on page 113, of his Exhibit No. 196, shows the proportion of coal tonnage handled to the total tonnage handled on the Baltimore & Ohio, Pennsylvania, Erie, and New York Central in comparison with the four coal-carry-
[fol. 5444] ing railroad- in the Southern region.

On page 97, in his answer to Witness Day, he compares the coal traffic handled on the L. & N., Illinois Central, and Southern Railway with the coal traffic handled by the Baltimore & Ohio, Erie, New York Central, New York, Chicago & St. Louis, and the Wabash.

The statement is made on page 97 that, excluding Kentucky, the coal traffic is more evenly distributed in the remaining areas of the South and in the East.

The proof of the pudding is in chewing the string—at least, I was brought up on that old adage.

I will give you some figures here. Taking four coal-carrying railroads in the Southern region, the Clinchfield, the L. & N., the Illinois Central, and the Southern, they constituted 47.8 per cent of the total miles operated in freight service in the Southern region; they operated 95.8 per cent of the total tons of bituminous coal originated in the Southern region; they handled 82.8 per cent of all the coal and coke handled.

Take the first group of railroads that Dr. Edwards mentioned on page 113, the Baltimore & Ohio, Pennsylvania, Erie, and New York Central, the percentage of total mileage operated in the Central, Eastern and Great Lakes regions, is 47.6 per cent, or within 1. per cent of the percentage pro-
portion operated by these four railroads in the Southern
[fol. 5445] region, yet those four railroads in the Eastern region originated only 23.3 per cent of all the bituminous coal originated, compared with 96 per cent on the four lines in the Southern region.

Those four Eastern railroads handled 43.4 per cent of the coal and coke handled, as compared with 82.8 per cent by the four roads.

Commr. Aitchison: What is your 100 per cent in these cases?

The Witness: I have taken the mileage, the total mileage operated in freight service in the Central, Eastern, and Great Lakes regions, added together as a normal to get the mileage of 47.6 per cent operated by the Baltimore & Ohio, Pennsylvania, Erie Railroad, and New York Central out of the total mileage operated in those two regions.

Commr. Aitchison: What is your next 100 per cent?

The Witness: My next 100 per cent, where I take my southern railroads, the four southern railroads operated 47.8 per cent of the mileage operated in the Southern region.

Commr. Aitchison: You used another one?

The Witness: Now then, of the total tons of coal originated——

Commr. Aitchison (Interposing): By whom?

The Witness: By all railroads in the Central-Eastern and Great Lakes regions, 100 per cent.

Commr. Aitchison: That is what I wanted.

[fol. 5446] The Witness: And the same is true of the Southern region, the total tons originated is the 100 per cent basis.

Taking the second group of railroads which Dr. Edwards used on that page 97 of Exhibit No. 196, where he added the Pennsylvania Railroad, they were 59.3 per cent of the total miles in the Great Lakes and Central-Eastern regions.

Those railroads originated 43 per cent of the coal and coke originated, and handled 59.2 per cent, again compared with the 95.8 per cent, and 82.8 per cent, respectively, for the Southern region railroads.

Mr. McCollester: Off the record.

(Discussion off the record.)

The Witness: On page 97, the lines are the Baltimore & Ohio, Erie, New York Central, New York, Chicago & St. Louis, and Wabash.

On page 113, the Baltimore & Ohio, Pennsylvania, Erie, and New York Central, the way I have it down, my statement is correct.

By Mr. McCollester:

Q. Now, will you take up your exhibit No. 227, Mr. Bell?

A. That exhibit is designed to expose the fallacy of taking a few hand-picked railroads in the Central-Eastern and Great Lakes regions for comparison with the four coal-carrying railroads in the southern region.

I do not think it necessary to read the explanation ap- [fol. 5447] pearing in the caption of the exhibit, and I simply call attention to the comparisons in Part 1 as between Section 1 and Section 2.

Commr. Splawn: Would the comparison have been better if you had taken other railroads, more representative?

The Witness: Mr. Commissioner, in Section 1, of Part 1, there were four southern railroads which originate coal and coke in heavy volume, and it shows in comparison that there were 26 railroads in the Central-Eastern and Great Lakes regions.

Now, in Section 2 I have shown that there are the four railroads first mentioned, together with three others which handle in excess of one million tons and 500,000 tons, respectively, of anthracite coal, bituminous coal, and coke, in the southern region, a total of seven railroads. That is in excess of 500,000 tons, and less than one million tons handled by five railroads in the southern region.

We come to the Central-Eastern and Great Lakes regions. You have got 34 railroads that handle in excess of one million tons.

Then you have four railroads which handle in excess of 500,000 tons and less than one million tons.

Commr. Splawn: You speak of exposing a fallacy here, of making a comparison of these four Southern railroads, with a few hand-picked roads. Just what is the fallacy?

[fol. 5448] The Witness: I mean that there are only four railroads, that Dr. Edwards has shown that there are four railroads in the South, and he has picked against that four railroads in the East, and he compares that to show that there is as great a diffusion of coal in the South as in the East. I would say there is not. As against four railroads in the South, you have 26 railroads in the Central-Eastern, and Great Lakes regions; and they have a great diffusion of coal through that territory, which the next page of my exhibit is intended to show.

Commr. Aitchison: You have included anthracite as well as bituminous, haven't you?

The Witness: Yes, sir. So did he. He said "Coal and coke". The South originates no anthracite, of course, but if you want to call——

Commr. Aitchison: (Interposing) The South originates more anthracite?

The Witness: None—very little; practically none.

Commr. Aitchison: I couldn't hear you.

The Witness: Of course, it is not fair, as I see it, to take the South's bituminous coal and not to include anthracite coal along with the bituminous coal in the northern territory.

As a matter of fact, my Exhibit No. 166, from which Dr. Edwards' figures were computed, includes the anthracite along with the bituminous and the coke in the eastern territory.

Commr. Aitchison: If you had included the 26 railroads [fol. 5449] in one group in the Central-Eastern and Great Lakes regions, followed Dr. Edwards' method, what is your idea as to where you would have come out, or do you have any opinion?

The Witness: I have a notion it would have shown upon even better in favor of the South; I mean, of showing that there is a greater diffusion in the handling of coal in the Central-Eastern and Great Lakes regions by a great many railroads, as compared with only four railroads in the South.

If you will notice, on the bottom of Sheet 1, of Exhibit No. 227, it shows that 17 of the railroads in the East handled in excess of 5,000,000 tons each, and 11 of them handled in excess of 10,000,000 tons each, and 4 of them handled in excess of 30,000,000 tons each; whereas, there were only 7 railroads in the South that handled in excess of 1,000,000 tons.

Commr. Aitchison: I see that, all right, but I am trying to translate this.

The Witness: I will be glad to compute that for you, if you would like to have it, Mr. Commissioner.

Commr. Aitchison: Have you done it?

The Witness: I say, I have not computed it, but I will be glad to do it. I am expressing my off-hand opinion.

Commr. Aitchison: We would like to close up this record.

Do you have any present impression as to where it would wind you up? If you do have, I would like to have it in the record.

[fol. 5450] The Witness: I cannot do it by the time you close today. I can get it in by tomorrow morning, but not tonight.

Mr. McCollester: Just what is your question, Mr. Chairman? As to where it ends up in the matter of costs?

Commr. Aitchison: Yes.

The Witness: In the matter of comparisons.

Mr. McCollester: I think he is talking about costs.

Commr. Aitchison: Yes.

The Witness: I cannot say anything about costs.

Mr. McCollester: We have Dr. Edwards' testimony that a substantial volume of coal traffic tends to reduce average costs. I think we can argue, and I think Dr. Edwards himself has agreed that if you eliminate the four roads in the South that are the major coal-carrying roads, the costs for the others must be substantially higher than the figures which he has computed for the South, as a whole, including the four coal-carrying roads in the South.

Commr. Aitchison: Suppose we eliminate these 26 railroads from the North and give them a rate structure of their own, what would the costs of the remaining roads be?

Mr. McCollester: In the North, the coal traffic is much more diffused among the major railroads of the North.

Commr. Aitchison: There are 15 of them, but he doesn't cite them.

Mr. McCollester: You have got the North pretty well [fol. 5451] covered by these 27.

Commr. Aitchison: I don't see it.

Commr. Norman: I think the South is pretty well covered by those four, too.

Mr. McCollester: Not so well.

Chrm. Aldredge: Supposing you eliminated those four roads out of the South, how would you deal with the——

The Witness (Interposing): Mr. Commissioner, my whole point is this: It has been argued here by Mr. Norman and others that you should have the same level of freight rates in different territories, on the theory that you have the same unit cost in all of the territories.

Am I right or wrong, Mr. Norman?

Mr. Norman: You are wrong.

The Witness: That is the substance of your contention; I mean, it is the basis for your contention, is it not?

Commr. Aitchison: We will examine him a little bit later. You are on the witness stand.

The Witness: All right.

I want to show that you can take the four coal-carrying railroads in the South, and if you please, you can go over and take the three bridge railroads which operate between Cincinnati and New Orleans, and they are the low-cost operating railroads.

If you are going to compute your average costs in the [fol. 5452] South by including the southern railroads, you won't have enough on the 23 railroads to buy axle grease; but if you are going to compute on the same low-cost ton miles thrown into the general average, and Mr. Norman would have you make your rates on that basis, I want to show the unfairness of any such way of trying to make rates in any such manner, based on such costs.

Chmn. Aldredge: To pursue your theory to its ultimate conclusion, if it is logical, then we would have to treat each railroad separately.

The Witness: Not necessarily, but you should not attempt to make your rates based on average unit costs.

Chmn. Aldredge: If you don't make them upon an average covering some territory in which more than one railroad is operating, the only other alternative is to deal with each railroad separately, isn't it?

The Witness: I don't find that necessarily so.

Chmn. Aldredge: You either have to average or deal separately, haven't you, individually?

Mr. McCollester: Mr. Commissioners,——

Chmn. Aldredge (Interposing): I asked the witness a question, and I would like to have an answer before you interrupt.

Mr. McCollester: All right.

The Witness: I do not believe you should make your [fol. 5453] rates based on a cost factor alone. You have too many other factors to take into consideration.

Chmn. Aldredge: I don't know that anybody is arguing that.

So far as costs are concerned, whatever weight is attached to it, haven't we got to deal with it on the average by including several roads together, or deal with each road individually? Is there any other alternative?

The Witness: If you expect to make your costs on a unit average, the answer is "Yes."

Chmn. Aldredge: If you use costs at all, you have either got to use individual railroads or by putting railroads together.

The Witness: Mr. Commissioner, may I say——

Chmn. Aldredge (Interposing): Can you answer me?

The Witness: I am going to answer you.

I can say, if it becomes necessary to take lines like the Florida East Coast Railroad, the Atlantic Coast Line Railroad and the Seaboard Airline Railroad, which are, strictly speaking, Carolina and Florida lines, you can make rates for those lines without having to include the low-grade coal-carrying line of the L. & N. Railroad, because it is hundreds of miles from the other railroads.

Chmn. Aldredge: That is perhaps the way they were doing it when you started out with your railroad in the [fol. 5454] South; they had a separation of Mississippi Valley Territory, and Carolina, and South Eastern?

The Witness: Certainly, we did.

Chmn. Aldredge: As a practical matter, what caused them to get away from it?

The Witness: Of course, it was the competitive and the market situation of trying to make the rates so as to keep your goods at the various markets. That is just exactly the theory that should exist today, and which they have been trying to tear down.

Chmn. Aldredge: As a practical matter, it didn't work, did it?

The Witness: Yes.

Chmn. Aldredge: It did work?

The Witness: Yes.

Chmn. Aldredge: Why did they change it?

The Witness: I don't know that they have changed it.

Chmn. Aldredge: Didn't they change it in the South?

The Witness: They have changed the territory and associations, and consolidated railroads, but you can't show me today that the railroads are making their rates based on unit costs or anything else.

Chmn. Aldredge: I wasn't talking about that.

The Witness: You asked me if they hadn't changed their method of rate-making. I say no.

[fol. 5455] Chmn. Aldredge: You said it would be feasible to separate Carolina roads, and the Mississippi Valley

Roads; and the South-eastern roads; isn't that virtually what you said; and make different rates?

The Witness: I said it would be feasible; yes.

Chmn. Aldredge: Then I directed your attention to the fact that, historically, that is the way it used to be; isn't that right?

The Witness: Yes, you are right.

Chmn. Aldredge: And that, in the course of time, that changed; is that right?

The Witness: The territories changed.

Chmn. Aldredge: No, they changed that method of dividing the territories for the purpose of making rates; isn't that right?

The Witness: For the purpose of class rates; you are right. They didn't change it. The Commission changed it in 13494.

Commr. Aitchison: Congress changed it in 1920, when it provided that we should establish rates as uniformly as possible.

The Witness: The Southern region and Pocahontas region, and so on.

Chmn. Aldredge: It was actually giving way?

The Witness: The territories changed, but it was not until [fol. 5456] 13494 and before that, Fourth Section violations in the South-East, that the Commission changed the basis for making rates. You had a different rate for the Carolina roads, the South-eastern roads, the Mississippi Valley, and so forth, right up to the time of the decision in 13494, except to the extent of the Fourth Section Compliance, which was decided in 1914.

Chmn. Aldredge: As a practical matter, that system didn't hold out; is that right?

The Witness. It hasn't held out; I will say that much; yes.

Mr. McCollester: Mr. Commissioner, may I say a word now?

I want to say that I conceive the Commission under the statute seeks to correct illegality in the rate structure and doesn't sit as traffic manager of the railroads.

I cannot conceive that to prescribe rates which would be based on average costs for a territory, which would mean that they would be less than cost for some of the railroads in the territory, merely because as a matter of traffic policy

that might be necessary, is within the power and function of the Commission, and we are prepared to argue that.

Chmn. Aldredge: Of course, you know in the Southern Class investigation, in the Consolidated Southern Cases, and in the Western Trunk Line Cases, and in the Eastern Class Rate Case, the Commission dealt with rates in that [fol. 5457] manner presumably by averaging—in fact, it so stated—by averaging transportation conditions over a wide territory.

Those decisions were all made effective. They haven't been, so far as I know, challenged yet on account of their illegality.

Mr. McCollester: Mr. Commissioner, we experimented with a law under which rates were to be made on a territorial basis, with the idea that they would be insufficient for some lines in the territory and excessive for others, and that there would then be recapture, and that recapture provision has been eliminated, so that unless you have all of the railroads in a given section of the country in one system, I see no way under the law by which the Commission can find unlawful rates which are necessary to maintain, to provide the cost for the most expensive line in the territory, where that basis of rates is prescribed.

If it results in excessive profits for other lines, that is another matter and can be dealt with.

Chmn. Aldredge: So that according to your theory of the law, the Commission would have to proceed to make rates for each individual carrier, and why should it deal with the carrier, as a whole? Don't they have differences over different divisions of the same carrier?

Mr. McCollester: I think that is the whole difference between the carriers acting as carriers, running their busi- [fol. 5458] ness, acting as traffic managers, and the Commission acting as a body to prevent violations of the law.

Chmn. Aldredge: I think the Commission might use some common sense in administering the law.

Commr. Aitchison: It is an old story. We started with Mr. Kimball at the time he was wanting rates made between Denver and Salt Lake on the basis of the Union Pacific rates and costs, and the Commission refused to permit that without consideration of the higher expense line of D. & R. G.

Mr. Norman: I am having great trouble restraining myself, but I will not say anything.

Commr. Aitchison: You are doing very well.

By Mr. McCollester:

Q. All right, proceed, Mr. Bell.

A. Sheet 2, of Exhibit No. 227, Section 1, shows the tons of bituminous coal which originated and terminated in the respective southern States, with the exception of Virginia.

Section 2 shows the similar information for the Trunk Line-C. F. A. States, and the New England States, and also for Virginia and West Virginia.

Just a brief comment: Excluding Kentucky, the seven Southern States shown in Section 1 originated only 8,125,000 tons of bituminous coal, and practically all of it was originated in Alabama and Tennessee; in fact, Alabama originated more than 63 per cent of the total, although Alabama terminated only 1,868,000 tons in excess of the coal originated.

[fol. 5459] Tennessee terminated 2,272,000 tons in excess of the tons originated.

The total tons terminated in the seven States exceeded the tons originated to the extent of 9,850,000 tons.

Virginia is not included in the States named in Section 1, because large quantities of Virginia coal *is* originated and terminated, or is received from connections and terminated on the lines of the Norfolk & Western, R. F. & P., and Chesapeake & Ohio Railroad, as well as on the Southern Railway.

The States of Tennessee, North Carolina, and South Carolina not only consume quite heavy quantities of coal originating on the Southern Railway, the C. C. & O., or the Clinchfield, the L. & N., and the little Interstate Railroad in the States of Virginia and Kentucky, but they consume large quantities of coal from the New River and Pocahontas Districts of the Chesapeake & Ohio and the Norfolk & Western.

Just to come to another phase of this coal situation, and Dr. Edwards' testimony, I think it makes the point that Mr. McCollester referred to a moment ago: At page 96 of Exhibit No. 196, Dr. Edwards states that for the calendar year 1941, Kentucky accounted for 74 per cent of the coal and iron ore originated in the South.

We have no 1941 tonnage figures in the present record so that that could be checked up, but I assume he has computed his figures from Schedule 541-A of the Annual Reports.

[fol. 5460] My computations from the Annual Reports show that 31,528,964 tons of bituminous coal originated in Kentucky on the C. N. O. & T. P., the Louisville & Nashville, the Southern Railway, and the Illinois Central, the four railroads in the State of Kentucky situated in the southern region which originates any bituminous coal.

9,900,690 tons originated in the other Southern States, excluding Virginia, would make a total, added to this 31,000,000 tons, of Kentucky coal of 42,793,175 tons originating in the southern region, excluding that originating in Southwestern Virginia.

Of the coal originated in Kentucky by the four Southern region railroads, only 220,000 tons originated on the Southern Railway, and 51,000 tons on the C. N. O. & T. P., neither of those lines being heavy coal originating lines in the State of Kentucky.

The Illinois Central originated 4,545,000 tons, and I might mention incidentally, a very large portion of that went to the Ohio River and points beyond, and wasn't diffused so much in the Southern territory.

The L. & N. originated, therefore, 26,382,00 tons of coal, which was 84.64 per cent of the Kentucky total. It was 86.6 per cent of the total coal originated by the L. & N. in 1941, for its entire line of 30,436,859 tons.

In 1939 the L. & N. originated a total of 23,271,940 tons.

[fol. 5461] Based on the 1941 ratio, the L. & N. originated 20,162,809 tons in Kentucky in 1939; that is, out of the total originated.

Based on information furnished me by the Louisville & Nashville Railroad—I referred to this in my previous testimony—I was able to spot 17,585,000 tons of the 1939 coal, or 87 per cent of it, as having destinations in the Ohio River cities and beyond, the average haul on over 16,000,000 tons of that coal being 240 miles.

Assuming the same ratio for 1941 as for 1939, out of the total of 26,382,000 tons of coal originated by the L. & N. in Kentucky in 1941, 22,952,000 tons moved to the Ohio River cities and beyond.

I don't quite get the point of Dr. Edwards' inclusion of iron ore in his figures in as much as only 77 tons of iron ore

originated on Southern region lines in the State of Kentucky in 1941, and that ore originated on the L. & N.

I may, incidentally, mention that I looked to see if any originated on the C. & O., and Norfolk & Western, and none of them showed any originating movement of iron ore in Kentucky in that year.

By Mr. McCollester:

Q. Do you have any reply to make to Dr. Edwards' comments on the subject of elimination of bridge lines from consideration in the territory as a whole.

A. Yes; Item 7, page 114, of Exhibit No. 196, Dr. Edwards said that the same criticism applied to the elimination [fol. 5462] tion from the Southern region of the Alabama Great Western, C. N. O. & T. P., and New Orleans-North Eastern, as his criticism of the elimination of the four coal-carrying roads from the Southern region; and in that connection Dr. Edwards made the observation that "The existence of bridge traffic serves to reduce the common expenses of handling all traffic."

The existence of bridge traffic not only serves to reduce the expense of the bridge lines, but the effect also is to reduce the computed average expense of all the railroads in the region.

It does not reduce the actual expense of any individual railroad, or group of railroads, operating in the region other than of the bridge lines.

In column 13, page 8, of my Exhibit No. 166, the average revenue per net ton mile on the C. N. O. & T. P., the A. G. S., and the New Orleans & North Eastern in 1939, was 5.43 mills; including taxes and rents 6.21 mills.

The fact that the bridge traffic of these railroads results in this low average cost does not mean that the higher actual costs of the Atlantic Coastline, Seaboard Airline, and Florida-East Coast, respectively, of 9.21 mills, 8.4 mills, and 10.19 mills, and including rents and taxes of 10.94 mills, 9.36 mills, and 12.59 mills, are reduced one iota by reason of the low operating expense for the three bridge lines which serve a section of the South, hundreds of miles [fol. 5463] removed from these three North and South railroads operating on the edge of the South Atlantic Seaboard, and whose consist of traffic and operating conditions are in no wise comparable with the bridge lines.

This would be true also of attempting to make rates for these three railroads in the eastern section of the Southern regions, based on any unit costs for the region as a whole, which includes the four coal-carrying railroads and the three bridge railroads in the average.

That is the discusion which we have just had, Mr. Commissioner, about the effect of that.

Chmn. Aldredge: I am interested in getting your proposal on the rate structure.

The Witness: I am not making any proposal. I am just trying to show some facts and figures. I haven't got any proposal in the case.

By Mr. McCollester:

Q. Have you any comment now, Mr. Bell, on Dr. Edwards' testimony regarding your use of net ton mile cost figures?

A. I have just a little to say on that, because I think there is some misunderstanding about what I have had in mind.

In Item 5—this is Item 5 of Dr. Edwards' Exhibit No. 196, page 111—he refers to the comparisons of the cost per revenue net ton mile for various groups of railroads in the South and East, appearing on pages 5 and 6 of my Exhibit [fol. 5464] No. 166, and refers in connection therewith to my testimony at pages 3623-4, of the record.

The purpose of these comparisons was designed to show the infirmity of undertaking to employ the average unit costs for different rate territories as the yard stick for making rates on all kinds of traffic in all railroads within the respective territories, or interterritorially.

The exhibit was designed to show the effect of such procedure and, particularly, by the inclusion in such average unit costs of the much lower costs of a small group of railroads whose traffic is comprised most largely of coal and coke and other low-grade, low-expense traffic, whereas the unit costs of other railroads in the same general territory may be very appreciably higher because of the lack of, or the sparsity of such traffic.

The comparisons are premised upon identically the premise mentioned by Dr. Edwards on page 112, of his Exhibit No. 196, that the territory having the greatest proportion of coal traffic will inevitably show the lowest cost, and the

even more definite statement which appears on page 96 of Exhibit No. 196, "that if much of the coal traffic is highly centralized in one section of a territory, much of the expense for handling this coal may not be common to the cost of handling all other traffic throughout the territory."

I use the revenue net ton mile cost comparisons because [fol. 5465] they were the only authentic figures that were available on file with the Interstate Commerce Commission from which any kind of a real cost comparison could be made.

I can't refrain from saying that all of the factors entering into the freight expense are reflected in the net revenue ton mile expense, and those costs can't be changed by a set of mathematical calculations designed to prove they are something else; so even assuming that each and every figure made by Dr. Edwards in his various studies are corrected, when you come to the costs of a given railroad or a group of railroads, your ultimate answer is bound to be to the same effect as the use of the cost per net revenue ton mile.

I am speaking, of course, of freight expense.

Q. Have you any comment, Mr. Bell, upon Item 8, on page 114, of Dr. Edwards' Exhibit No. 196, with reference to the assignment of freight to different kinds of equipment?

A. In that item, Dr. Edwards refers to my testimony at page 3646, given at Columbus.

In accordance with the understanding at that time, that I would discuss it with Dr. Edwards, we had a conference on December 9th, at which Mr. Parr and others of Dr. Edwards' organization were present, and at which the subject was gone into to the extent that either of us had any relevant information.

I want to say I think Dr. Edwards deserves a great deal of credit for his sincere effort to obtain the facts, but in my [fol. 5466] opinion, the allocation of commodities between different types of cars, as shown in Table No. 4 of his Exhibit No. 195, and the computations on the cost based thereon, do not yet portray the actual situation.

As Dr. Edwards has stated in his Exhibit No. 196, and in the footnote to Table 4 of his Exhibit No. 195, his allocations are based first on estimates made by a committee of the Association of American Railroads, and an examination of those estimates immediately discloses that much of their data is wholly inaccurate.

I think Dr. Edwards agreed with me on that.

Second, the data which I furnished him, most of which was based on my own general knowledge and experience and certain investigations I had made relating to a few specific analyses.

Third, the one-day traffic study made by the ODT, covering their movement on May 27, 1942. This one-day study, in my judgment, cannot be accepted as reflecting the day-in and day-out types of equipment used 365 days in the year, throughout any one or all of the different sections of the United States.

Commr. Aitchison: Do you mind a question, Mr. Bell?

Do you know of any equipment that was not being used on that day, May 27, 1942?

The Witness: I don't know that there was any equipment but I was going to say——

[fol. 5467] Commr. Aitchison: (Interposing:) All of the equipment we had was used on that day, and more of it since; isn't that right?

The Witness: I think unquestionably—I think that was the thing I was going to mention also, that in 1942 the war conditions obtained, the supply of equipment was limited and in many, many instances freight ordinarily loaded in one traffic car was being loaded in another traffic car.

Commr. Aitchison: Is that an unusual thing in this country?

The Witness: Not in war times.

Commr. Aitchison: In times of peace?

The Witness: It was more unusual during the war times.

Commr. Aitchison: Is it an unusual thing in times of peace?

The Witness: You say it is unusual?

Commr. Aitchison: Is it an unusual thing in times of peace that all equipment which is available is being used, and that it is being used not for the primary purpose for which it was designed?

The Witness: Yes, I think it is unusual in times of peace.

Commr. Aitchison: All right. I will ask you if that condition didn't exist in the following years that I will cite: 1905, 1906, 1914, 1915, 1916, 1920, 1922?

[fol. 5468] The Witness: I will go along with you in 1914. I don't remember 1905 and 1906. I will go along with you in 1914, because it was during a war period.

Commr. Aitchison: We were not at war then.

The Witness: We were not then, but we were in war in 1917, but certainly we were getting ready.

Commr. Aitchison: I didn't mention 1917.

The Witness: 1914.

Commr. Aitchison: We were not in war.

The Witness: But we were producing munitions for the other nations overseas, outside of Germany, of course.

By Mr. McCollester:

Q. It doesn't follow, Mr. Bell, even if all the equipment is being used, that the commodities having the average loadings and other characteristics, were loaded in the particular kinds of equipment that were used by Dr. Edwards for the purposes——

A. (Interposing:) They might be using all of the equipment, but they might not be using box cars for box car traffic, and gondola cars for gondola traffic.

Commr. Aitchison: The only purpose of my question was there have been times when the use of all the equipmment in the manner in which Mr. Bell described could not be ascribed to war.

The Witness: I don't agree with you, Mr. Commissioner, on that. We have our own opinion about it, of course. [fol. 5469] Commr. Aitchison: Was there any war on in 1920?

The Witness: No; we had just gotten over one.

Commr. Aitchison: Was there any war in 1922?

The Witness: No; and that is the time we were just going into the depression.

Commr. Aitchison: In 1922?

The Witness: Yes.

Mr. McCollester: 1932, you mean, don't you?

Commr. Aitchison: We had just gotten over the one in 1921.

The Witness: We had gotten over the war, and, if my memory is right, in 1920, you had your heavy increase of traffic, and revenue, resulting from the war conditions, construction work, and so forth, but that fell off with a slump in 1921.

Where you had increased the rates in 1920, you reduced them in 1922 because of the effect the rates were having on business.

Commr. Aitchison: In 1922 it was necessary for this Commission to exercise its Service Department because of the car shortage. That is a matter of History, Mr. Bell.

By Mr. McCollester:

Q. Have you anything more, Mr. Bell?

Chmn. Alldredge: As I understand you, you don't believe a sample study can be accurate at any time?

The Witness: No; I don't believe that a one-day study would be accurate.

[fol. 5470] Frankly, I have been very much surprised that the railroads did not have information showing the types of cars used for loading of different commodities. They don't know what types of cars they are using for the loading of their commodities except in a general way. They have no statistics on it.

Of course, Table 4 gives equal weight to the cars from the South and Northwest, and so forth.

Frankly, as I say, I think Dr. Edwards did the very best he could on it, but personally I wouldn't be willing to accept it for rate-making purposes.

Commr. Aitchison: He had a two-day study, too, not one-day.

The Witness: He said in his testimony that he used the one-day study for this.

Commr. Aitchison: Off the record.

(Discussion off the record.)

By Mr. McCollester:

Q. Mr. Bell, just one question, in regard to the traffic study: Have you any comment on Witness Aitchison, Exhibit No. 194, which superseded Exhibit No. 14, I believe?

A. I have made an examination of that exhibit, and the testimony I gave in connection with Dr. Aitchison's Exhibit No. 14 would apply.

Q. Were Exhibits Nos. 224 to 227, inclusive, prepared by you or under your supervision and direction, and are [fol. 5471] they true to the best of your knowledge and information and belief?

Mr. McCollester: We offer them in evidence.

Commr. Aitchison: Without objection they are received.

(Exhibits 224, 225, 226, 227, Witness Bell, received in evidence.)

Mr. McCollester: You may cross-examine.

Commr. Aitchison: Just a min-te, before you begin cross-examination. Off the record.

(Discussion off the record.)

Mr. Smelker: I have one question.

Commr. Aitchison: Mr. Smelker?

Cross-examination.

By Mr. Smelker:

Q. You have consumed considerable time and seemed to be perturbed, Mr. Bell, concerning Dr. Edwards' failure to include the segments of the Southern roads into Official Classification Territory.

Will you turn to page 3, of his Exhibit No. 196? Do you have it there? Will you refer to the statement at the top, which is the carload fully distributed costs by territories, and refer to line 3, "eastern including New England;" for box car traffic it is 101 per cent of United States Costs, and for gondola and hopper car traffic it is 101 per cent of United States costs.

Now, refer to the line "Eastern including New England and State of Kentucky." There the fully distributed costs for box car traffic are 100 per cent and for gondola and [fol. 5472] hopper car traffic are 99 per cent.

Don't you think that Dr. Edwards' failure to include the tonnage which moved over these segments of these lines would be negligible in its effect on the Eastern costs?

A. I don't know. You have got your New England traffic included there. You haven't got that computation made for the Central-Eastern, and Great Lakes regions?

Q. In one case, in Eastern, New England is thrown in by Dr. Edwards, and in the second case "Eastern including New England, and the State of Kentucky" is thrown in, where the tonnage is enormous, as far as Kentucky is concerned, and the costs are lower.

A. Kentucky, yes; but where have you got Eastern not including New England?

Q. I mean Eastern and New England with and without Kentucky.

A. I see where those figures are.

Commr. Aitchison: I can't hear what you say up here.

The Witness: I saw those figures before I got on the stand.

By Mr. Smelker:

Q. In view of the fact that the costs only vary 1. per cent as far as box car traffic is concerned, and as far as gondola traffic is concerned only 2 per cent, whether Kentucky is included or not, don't you think that his failure to include the tonnage handled over these segments of the Southern lines, in Official Classification Territory, would be negligible. [fol. 5473] A. No, I don't think so, and I stated the reasons why.

Q. It would be less than 1. per cent as far as box car traffic is concerned?

A. I wouldn't say without making the computations myself, which I am not prepared to do, but I tried to give my illustration of the coal alone for the Pocahontas lines in the C. F. A. Territory.

I mentioned that you have omitted 12 per cent of the line of the Southern Railway; you omitted 7.8 per cent, I think it was, of the M & O; and you have a very heavy traffic moving on the Southern Railway in Kentucky, and a fairly heavy traffic moving over those lines in Indiana.

You know we have the Mobile & Ohio, with the heavy traffic, and these others. When you take one case, it may not make so much difference, but when you add a whole lot of them together, it is like adding a lot of drops of water; you get a bucketful.

Q. In any case, it would be less than 1. per cent?

A. I won't admit that. The point is I don't know what it would be, and I said so.

Mr. Semelker: That is all.

Commr. Aitchison: Have you tried to find out what the effect would be?

The Witness: With my limited means at my command; [fol. 5474] but I could not take the time to go over every one of these figures, and moreover, I didn't have the information that Dr. Edwards didn't have, and that is he did

not make the segregation of these lines of the Southern lines. He didn't make the segregation of the lines of the Norfolk & Western, the Chesapeake & Ohio, and Kentucky, and without the information there I had to guess at it, and he is guessing at it if he brings up these figures here, unless he gets the segregation for these various lines.

Commr. Aitchison: I take it the answer to my question is "No"?

The Witness: "No"; that is the answer; yes, sir.

By Mr. Norman:

Q. Would you think that the exclusion or inclusion of those segments would have as much or more effect upon averages than the exclusion or inclusion of the State of Kentucky?

A. I don't know, Mr. Norman.

Mr. Norman: That is all.

Commr. Aitchison: From a practical standpoint, based on your experience, do you know any reason that Pocahontas would be included in either of these territories?

The Witness: Pocahontas naturally should be included along with the Central-Eastern and Great Lakes regions because it is a part of the Official Territory.

It takes the same rate levels in so far as your general [fol. 5475] class and commodity traffic is concerned. It is made on the Official Territory basis.

Commr. Aitchison: Any further examination of Mr. Bell.

Mr. McCollester: Nothing further.

Commr. Aitchison: You may stand aside.

(Witness excused.)

Mr. McCollester: Mr. Chairman, while we were off the record, I brought up a matter that I would like now to bring up on the record.

Since Dr. Aitchison was on the witness stand to identify her Exhibit No. 194, I asked her if any attempt had been made, on the basis of examination of tariffs, to determine with respect to the study of the movement of carload traffic on May 27, 1942, what of the traffic was class rate and what moved at commodities or exceptions, and I understood from her answer that some such attempt had been made to

analyze and break down the figures on the basis of the tariffs.

I should like to recall her to the witness stand for the purpose of asking that the results of the analysis be put into the record, and I may say that in making this request I want the record to show that we do not concede that a one-day test, especially during war times, affords a proper basis for the making of rates for the future, and as to the methods by which the analysis, whatever it is, was made, we reserve our right to question its validity, but for what [fol. 5476] it is, we would like it in the record for the benefit of all parties, so that we may have the benefit of any or all the studies that have been made in connection with this May 27, 1942, traffic test.

Dr. B. Aitchison was recalled as a witness, and testified as follows:

Direct examination.

By Mr. McCollecter:

Q. You have hear my preliminary statements, Dr. Aitchison. Have you the results of such an analysis, and, if so, are they in such form that they can be either read into the record or filed in some exhibit?

A. Yes, sir; I have some results there for September 23rd.

Q. Not May 27th?

A. Not May 27th.

Q. Will you tell me just how the analysis or the breakdown was made.

A. Since the waybills for the day were not available for any lengthy examination, the Office of Defense Transportation made for us a tabulation showing for each individual commodity shipped, such as copper cathodes, corn-on-the-ear, pecans in shells, that is, they itemized the number of carload shipped from each territory to each other territory.

These tabulations were turned over to the Rate Branch of our Bureau of Traffic. That Branch went through the tabulations and for each movement marked the most probable rate charged. This tabulation did not give origin and [fol. 5477] destination explicitly, but merely the origin rate

territory, and the destination rate territory, as defined for this proceeding.

Q. Was it confined to inter-territorial or when it gave origin and destination rate territories, might those be the same, so that the intra-territorial movements were included also?

A. All movements were included also both intra-territorial and inter-territorial.

There were three classes of rates recognized: The so-called pure class rate where an article moved under the percentage of first class shown for it in the classification; the exception rating, where it moved under a percentage of first class other than that shown for it in the rating and the commodity——

Q. (Interposing:) In the rating classification?

A. In the rating classification; and the commodity rate, where it was a specific commodity rate, and in some cases I believe—there has been some dispute about this—where there has been a column commodity rate, some people, I believe, call those exception rates, but in the printed rates they are listed as column commodity rates, so that they were coded as commodity rates in that case.

Mr. Norman: Although made on a percentage of the first class?

The Witness: Yes; they were related to first class, but [fol. 5478] were a specific commodity and not listed as an exception, quite the contrary. They were named commodity rates.

By Mr. McCollester:

Q. As I understand it, what was done was not to check the actual waybills to find out as to each particular shipment, whether the particular rate charged was a class rate or commodity rate.

A. That is true.

Q. But instead, the people of the Division used their best judgment, based on their familiarity there with the tariffs, as to what the rate probably was?

A. And with the movements, too, where the movements were.

Commr. Aitchison: May I interrupt?

For illustration, they wouldn't fool around much on telling what coal was?

The Witness: No, they would not.

By Mr. McCollester:

Q. With that explanation, can you give the results? Are they stated in per cents?

A. They are stated in per cents, as far as carloads go, and carload traffic on September 23rd, for the whole traffic, 4.1 per cent carried class rates, 10.7 per cent exception ratings, and 85.2 per cent commodity rates.

Mr. Norman: That is the percentage of number of shipments?

The Witness: Yes; that is percentage of carloads.

By Mr. McCollester:

Q. Have you that on a revenue basis?

[fol. 5479] A. An estimated revenue basis.

Unfortunately, due to the manner in which our commodity districts are reported, it was not possible to break the revenue down on a territorial basis.

The carloads are broken down on a territorial basis.

Q. The figures you have just given are for the whole?

A. For the whole United States.

Q. Now, let's have the revenue.

A. Revenue class rate traffic, 6.3 per cent; exception rating traffic 16.1 per cent; commodity rate traffic 77.6 per cent of the total.

Commr. Aitchison: The first figures are numbers of cars?

The Witness: Percentage of total cars.

By Mr. McCollester:

Q. Now, Dr. Aitchison, can you give us the break-down of the per cents of total cars by movements; that is, within each territory, and from one terrritory to another?

A. Which territories are you interested in? There are 25 combinations.

Q. Is this in some form——

A. (Interposing) It can be reproduced and sent to you.

Q. It can be?

A. Yes, sir.

Mr. McCollester: Could that be done, Mr. Chairman?

Commr. Aitchison: Certainly.

[fol. 5480] Mr. McCollester: I think that would be desirable.

And, if it is agreeable to the Commission, I would appreciate having it done.

Mr. Norman: It is too long to read it.

Commr. Aitchison: Well, we will treat them as an exhibit coming in after the hearing and give it a number when it is ready for distribution. It will take its appropriate number at that time.

Mr. McCollester: That is all I have. Thank you very much.

Commr. Aitchison: Cross Examine.

Mr. Norman: No cross examination.

Commr. Aitchison: You are excused.

(Witness excused.)

Commr. Aitchison: Mr. Grubbs?

Mr. Grubbs: I would like to recall Mr. Morris.

Ben. F. Morris was recalled as a witness, resumed the stand and testified as follows:

Commr. Aitchison: You have been sworn, haven't you?

The Witness: Yes, sir.

Direct examination.

By Mr. Grubbs:

Q. Mr. Morris, Mr. Hart took you to task for referring to north-bound movement over the L. & N. under the general commodity description "Manufacturers and Miscellane-[fol. 5481] ous" and for not breaking that down.

Do you have the break-down?

A. Yes, sir.

Mr. Grubbs: Now, if your Honors please, Mr. Morris could read this into the record. It would consume some time and I have showed this to Mr. Norman, and, if it is agreeable to him, as I understand it is, I would like to have the privilege of submitting this statement following the close of the hearing as an exhibit to be marked later when it is received.

Commr. Aitchison: If there is no objection, that may be done.

Mr. Norman: No objection.

Mr. Grubbs:

Q. Mr. Morris, in the course of Mr. Henderson's testimony, he referred to the failure of the railroads to make rates on steel truck bodies from Nashville to a point in New Jersey on the Official Territory Level.

Will you tell us if that was considered by the railroads, and if they did not put in those rates, why they did not?

A. It was considered by the Louisville and Nashville, I know. When the request was received from Mr. Henderson, we developed that the truck bodies had been purchased by one of the Governmental authorities f. o. b. Nashville, and since the Governmental authorities did not indicate any necessity for revision of the rates from Nashville to Metuchen, I think it is, New Jersey, we did not consider it [fol. 5482] necessary to make any readjustment in the rate.

Q. In the course of Mr. Hart's testimony, he indicated, based on his general knowledge, that the movement of class traffic south-bound was very largely, or to a substantial extent, was by forwarder. He confined that on cross-examination to l.c.l. traffic.

I will ask you if you have any figures for the Louisville & Nashville which will indicate for us the proportion of forwarder traffic to total traffic south-bound.

A. I have been able to obtain today our tonnage of forwarder traffic from the Cincinnati group where the forwarder traffic handled by the Louisville & Nashville very largely originates, to the entire South; and our total tonnage of merchandise traffic from and through Cincinnati to the South.

The figures are: Forwarder traffic during 1942, 71,012 tons; merchandise traffic, from and through Cincinnati, 204,880 tons.

Commr. Aitchison: Is that the way you move your forwarder traffic to New York?

The Witness: Mr. Chairman, such as we get; yes, sir; it comes to us at Cincinnati.

By Mr. Grubbs:

Q. Is the Louisville & Nashville one of the largest movers of forwarder traffic in the South?

A. It is a rather large mover, relatively. I shouldn't say it is the largest, Mr. Grubbs.

[fol. 5843] Q. I said, one of the largest.

A. The Illinois Central probably handles the greater volume.

Q. And is the L & N next to the Illinois Central?

A. The L & N is second or third. I am not quite certain how our movement compares with that of the Southern Railway.

Q. I will ask you this question: Has forwarder traffic displaced on the L & N l.c.l. traffic in package cars?

A. We have watched the movement very closely since its inception with us, and our best judgment is that it has not taken any material amount of tonnage from our package car, merchandise car.

Mr. Grubbs: If your Honor please, I think that before this witness steps down, it would be well for Mr. Clark to make a statement on this general subject that he has to make, and it might obviate any further questions from him on this subject.

Mr. Clark: At this time, may it please your Honor, may we introduced by reference, certain excerpts from a decision of the Commission which I will make reference to?

Commr. Aitchison: Yes, you may.

Mr. Clark: It is factual data.

Commr. Aitchison: What is it?

Mr. Clark: I say it is factual data.

The decision is in 28323, entitled "All Freight Rates to Points in Southern Territory", decided November 13, 1942, [fol. 5484] reported at 253 ICC 623.

From a mimeographed copy, I want to introduce the second paragraph, on sheet 11, the five lines dealing with the Southern Railway All-Commodity Rates in Less Carload Traffic; also Appendix B and the two paragraphs on sheet 10, the Appendix in those two paragraphs dealing with such comparisons for the Illinois Central and the Louisville & Nashville.

Mr. Norman: I understand that this is just a movement from C. F. A. and that there are similar figures in an East-

ern Case about the movement from the East to the South; is that right, Mr. Hart?

Mr. Hart: Yes, in I & S 5027, I think it is, the figures are shown into Atlanta, forwarder traffic, which of course doesn't move by rail but by truck. In discussing this matter, I had reference to forwarder traffic, whether it moves by rail or truck, into Atlanta.

Commr. Aitchison: Of course, our reports of revenues distinguish between revenues received from forwarder traffic and that received from other traffic. That is already in the record here.

If you want to have one of these other cases considered, Mr. Norman, I think probably Mr. Clark will agree that you may give the citation to it later and refer to it in your brief, citing the part you want to have us consider.

Mr. Norman: All right.

[fol. 5485] Commr. Aitchison: That stipulation is made.

Mr. Grubbs: That is all for this witness.

Commr. Aitchison: Cross-examine.

Cross-examination.

By Mr. Norman:

Q. Mr. Morris, some question was raised here this morning in cross-examining Mr. Hart as to whether or not any movement of tires, automobile tires, from the South, north-bound on this break-down which you are now to put in exhibit form—it appears that for the L & N alone in the month of September, there were 102 cars.

Wouldn't you consider that a substantial movement?

A. Without checking the figure, I would be obliged to say I would consider 102 cars a rather material movement of tires; yes, sir.

Mr. Norman: That is all.

Commr. Aitchison: You may stand aside.

(Witness excused.)

Commr. Aitchison: Anything further, Mr. Grubbs.

Mr. Grubbs: As I indicated yesterday, the Southern Lines feel that the Southern Governors have not treated us fairly.

As Mr. Norman said yesterday, every one knows the kind of a case the Southern railroads made at the very beginning.

Of course, everybody does not attach the implication that he wanted attached to his statement, but what he did in the beginning of this case was to lay before you our rates [fol. 5486] show you what we had and how we got it, and we say we were unacquainted with any substantial or any material complaint from any shipper and that we felt that we were entitled to hear those who had some complaint against our rate, and that when we should be given an opportunity to say what we had to say about those complaints.

Now, Mr. Norman, or the Southern Governors, presented some shipper witnesses at Indianapolis, at which time they said they would probably wish to introduce one or two more at Columbus, which they did, but they have come here and presented additional witnesses and have presented, in Mr. Hart particularly, one witness who represents himself, as the embodiment of many interests and he, in his Exhibit No. 220, listed those concerns for whom he speaks, particularly; indicating that they have some special grievance.

It is just physically impossible for us to meet this showing that has been rushed on us here at the last moment.

As I said yesterday, Mr. Hart's exhibit, to which I have referred, wasn't even circulated to us until yesterday in the manner in which your Honor said they should be circulated.

We have been taken by surprise, but we have no disposition to prolong this proceeding, but I do think we ought to be given, in these circumstances, an opportunity to present any facts that we think ought to be presented on the subjects that have been discussed by Mr. Hart, and also by [fol. 5487] these two other witnesses, and Mr. Ryan and Mr. Weaver.

It seems to us the reasonable thing to do in the circumstances, not desiring to prolong the proceeding, would be to permit us to submit in writing, within a reasonable time, any statements we have to make, such statements, of course, to be sworn to, and we hereby make such a request.

Commr. Aitchison: That request is made on behalf of whom?

Mr. Grubbs: That request is made on behalf of Southern Railroads, Class I Southern Railroads.

Mr. Norman: I will say, in the first place, that I don't think they have been treated unfairly in any respect, and we have offered nothing here that was not in rebuttal of evidence that was put on after we offered our testimony at Indianapolis and Columbus.

Furthermore, most of this testimony is from people who stated that that didn't understand that their rates were involved here, or that they could get relief here, but they were testifying to show that they were supporting, as an industry, this effort, and further, that they would not be able to get the Northern lines to concur; in other words, they were rebutting testimony that was put in by the railroads.

Now, in so far as their filing a sworn statement, I haven't any objection to it. Let them file it. Of course, I would have no chance to cross-examine their witnesses.

[fol. 5488] Commr. Aitchison: I think if that is going to be done, in all fairness you ought to be permitted to submit such questions as you want to.

Mr. Norman: And have them answered.

Mr. Grubbs: And have them answered. That is quite agreeable to us.

Commr. Aitchison: Will you be able to handle that so it can be treated as an exhibit coming in after the hearing?

Mr. Grubbs: It will be all right, sir. Do you want to fix a time for that, your Honor?

Commr. Aitchison: What time do you want?

Mr. Grubbs: I would like to ask for fiftten days.

Commr. Aitchison: Why do you need fifteen days?

Mr. Grubbs: Because, your Honor, Witness Hart has quite a number of these manufacturers or these shippers and we desire to inquire into and analyze the facts concerning their requests on us for rates and to determine whether there has been competition that we felt required or did not require such rates.

Commr. Aitchison: I am not asking you about the character of the showing. I think fifteen days is too long. I will allow you ten days.

Any further testimony, gentlemen? Anything further?

(No response.)

If not, the record of the testimony will be closed.

The Commission designates this as a proposed report case.

[fol. 5489] Briefs of the parties, pursuant to the Rules of practice will be filed and served on or before June 30th.

Attention is called to the provisions of the Rules of Practice with respect to the mechanical provisions of the briefs

themselves, or the documents themselves, and also the necessity for proper abstracts and requested findings of fact.

In order to make as light a burden as possible with respect to the service of briefs, and so forth, the Commission will undertake, before the time for service, to compile a service list of parties on whom briefs may be served, and therefore, the request will be made that the various interests which are in common canvass the situation between themselves and endeavor to arrange for the service of as limited a number as possible; and, if it is possible, to arrange for service upon one party for a group. That is considered desirable.

Of course, we all have in mind now the limitations of labor and limitations upon paper. We want to meet that as much as we can, considering the importance of the case.

Is there anything further?

Mr. McCollester: Mr. Chairman, in regard to the brief, I beg to inquire whether the Commission feels that it should, for the purposes of this proceeding, insist upon the observance of that portion of the sub-paragraph "D" of Rule 91, which states that the abstract of evidence relied upon should follow the statement of the case and precede the argument.

[fol. 5490] Chairman Alldredge: The abstract?

Mr. McCollester: The abstract; yes.

It would be just my impression that we would write a more useful brief——

Commr. Aitchison: (Interposing) Read the next sentence.

Mr. McCollester: Yes, but I make this reference because your Honor referred to the subject of abstracts and asked that we observe the rule regarding abstracts.

The next paragraph says we don't have to if we don't want to.

Commr. Aitchison: I was not attempting to get away from that rule which gives the option, but I was calling attention to the necessity for giving us an abstract, and I meant to make that cover just exactly the scope of the rule which you have cited, 91 "D", and in the event no abstract is given, of course, references to the record should be given instead.

The rule is pretty clear and there was no intention to give the rule a narrower application than the rule itself provides.

Mr. McCollester: I have an idea in this sort of proceeding the most helpful brief would be one that included a discussion of the evidence relied upon in with the argument rather than in a separate portion of the brief.

Commr. Aitchison: If there is nothing further, then, subject to the reception of three or four exhibits, that is, Mr. Grubbs one and Mr. Norman one, the hearing will be closed.

(Whereupon, at 5:10 o'clock p. m., the hearing was closed.)